



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



3 3433 06170723 2







THE
POLITICAL GRAMMAR
OF THE
UNITED STATES;

OR,
A COMPLETE VIEW OF THE THEORY AND PRACTICE OF THE
GENERAL AND STATE GOVERNMENTS, WITH THE
RELATIONS BETWEEN THEM.

DEDICATED AND ADAPTED
TO THE
YOUNG MEN OF THE UNITED STATES.

BY EDWARD D. MANSFIELD,
COUNSELLOR AT LAW.

NEW-YORK:

PUBLISHED BY HARPER & BROTHERS,
NO. 82 CLIFF-STREET,
AND SOLD BY THE PRINCIPAL BOOKSELLERS THROUGHOUT THE
UNITED STATES.

1834.

Wells

[Entered, according to Act of Congress, in the year 1834, by HAR-
PER & BROTHERS, in the Office of the Clerk of the Southern Dis-
trict of New-York.]

PROY WEBB
CLUB
YACHT

PREFACE.

THE following work was commenced in the winter of 1832-3, before the Exposition of Mr. Bayard, the Outlines of President Duer, or the admirable Commentaries of Justice Story, had yet issued from the press. Why the author was not deterred from the continuance of his undertaking, by the appearance of such distinguished instructors in the same arduous field, will sufficiently appear from the following statement of his object and his plan.

It was early and strongly impressed upon the mind of the writer, that *political instruction* was necessary to *political liberty*; that the establishment of constitutional rights pre-supposed in the people a knowledge of the elementary terms, definitions, and principles, expressed in written constitutions; and that without such knowledge, whatever other information or intelligence might be cultivated, our happy republic would pursue the same melancholy career which had led to the ruin of the free nations of antiquity. To facilitate such

knowledge and instruction was the object of the writer in the compilation of the following work. It is intended as a text-book for young men, either in public education or private reading. The works which have preceded it have chiefly been confined to one subject,—Constitutional Jurisprudence. The plan of this is much more extensive, though in execution it has not occupied more space. The object of the author was to give, not merely a view of the Constitution, but a brief and correct delineation of the theory and operation of the government. Accordingly, he has not only given a condensed sketch of the Origin of the Constitution, —Political Jurisprudence, and the Ratifications of the States,—but has added a brief view of the *State* Constitutions, and of the *Relations* between the *States* and the *Nation*, and the *practical operation* of the General and State Governments. The latter part of this work,—being nearly half,—is, therefore, almost wholly original; and the rest, it is believed, has lost nothing by being, in a great measure, free from comments, while it is accompanied by references to the highest authorities.

In preparing this work, the author has consulted many writers on national and political law,—to some of whom, as will be seen by the references, he has been under special obligation. On Constitutional Jurisprudence, he has followed chiefly the outlines of Chancellor Kent in his Lectures, Justice Story in his Commentaries, and the decisions of that great and enlightened expositor of the Consti-

tution,—the Supreme Court. In the general principles and relations of the government, he has followed substantially the opinions of President Madison and Mr. Webster, the founder and defender, as he believes, of the true system of American politics.

In conclusion, the author believes that no principle will be found here which has not the superior weight of authority in its favour,—none which in any way impairs the principles and durability of republican government,—none which was not also the faith of that illustrious band of patriots, who formed and left to other ages that greatest monument of human wisdom,—the American Constitution.

Cincinnati, July, 1834.



TABLE OF CONTENTS.

BOOK I.

INTRODUCTION.

Definitions.

CHAPTER I.

Origin of the Constitution SECT.
1-28

CHAPTER II.

Constitution of the United States, with the
Decisions, Authoritative, of every Branch
of the Government under it 28-435

CHAPTER III.

Ratifications of the Constitution 435-463

CHAPTER IV.

Synopsis of the Constitutions of the States 463-507

CHAPTER V.

Relations between the General and State Gov-
ernments, stated in the form of Proposi-
tions, and regularly demonstrated 507-538

BOOK II.

OPERATION OF THE NATIONAL AND STATE GOVERNMENTS.

CHAPTER I.

Practical Operation of the Constitution of the United States.

SECT.

1. Office and duties of the Executive.
2. Functions of, and mode of proceeding in, the Legislature.
3. Functions and Jurisdiction of the Supreme Court 538-704

CHAPTER II.

Practical Operation of the State Governments 704-722

ge
It
cit
an
mv
so

au
pa
iv

INTRODUCTION.

POLITICAL DEFINITIONS.

1. **SOVEREIGNTY**,—is the highest power!¹

Thus, for a *state*, or nation, to be sovereign, it must *govern itself, without any dependence upon another power.*² It must have *no superiors.*³ But when a community, city, or state makes *part* of another community or state, and is represented with *foreign powers* by that community or state of which it is a part, then it is *not sovereign.*⁴

2. **GOVERNMENT**,—is the whole body of constituted authority.⁵ Thus, from the very origin of society, one portion of the people have exercised authority over the rest. The authority thus exercised is called the *government*, and it derives its just powers from the consent of the governed.⁶

3. **LAW**,—is a rule of action.⁷ In this general sense, it signifies the *rules* of all action, and constitutes alike the rules by which the heavenly bodies move, nations are governed, and the plants grow. *Law*, in a political sense, however, signifies a *rule of human action*. In a particular state, “it is a rule prescribed by the

¹ Johnson. ² Vattel's *Laws of Nations*, p. 16; Martin's *Laws of Nations*, p. 23. ³ Rutherford's *Institutes*, p. 282.

⁴ Martin, p. 25. ⁵ Crabbe. ⁶ Declaration of Independence.

⁷ 1 Blacks. Commentaries, p. 38;—Johnson.

supreme power in the state, commanding what is right, and forbidding what is wrong."

4. **CONSTITUTION**,—is the constituted form of government.¹ It is the *fundamental law*; the regulation which determines the manner in which the authority vested in government is to be executed.² It is delineated by the hand of the people.³

5. **A DESPOTISM**,—is that form of government⁴ "in which a *single individual*, without any law, governs according to his own will and caprice." An example of this kind of government may be found in Turkey, where the sultan exercises all the powers of sovereignty, with respect to the general administration of public affairs; but, even there, he is limited by certain customs and rules, as it respects private justice.

6. **A MONARCHY**,—is that form of government in which a *single individual governs*, but according to *established laws*.⁵ The governments of Austria, Prussia, France, and England are examples of this form of government. The *limitations* placed upon the monarch are, however, very *different in degree*: thus, the power of the Prussian monarch is very great, while that of the king of England is so small as scarcely to be felt. The latter acts through his *ministers*, who are held responsible to the *representatives of the people*, and can maintain their power only so long as they can satisfy public opinion.

7. **A REPUBLIC**,—is that form of government in which the *whole people*, or only a *part of the people*, hold *sovereign power*.⁶ The people of Athens were formerly an example of the first kind of republic, and governed themselves by primary *assemblies of the people*, a mode which could only be adopted where the people were chiefly citizens, and inhabitants of one capital city. In

¹ Crabbe, Johnson. ² Vattel, p. 26. 27. ³ Supreme Court; 2 Dallas, p. 304. ⁴ Montesquieu, book 2d, chap. I. ⁵ Montesquieu, Spirit of Laws, book 2d, chap. I. ⁶ Idem.

modern times the United States are an example of the *same kind* of republic, with this difference, that the people do not govern themselves by their assemblies, but by *delegates*, or through the principle of *representation*. An example of the *second* kind of republics may be found in Venice, Genoa, and the Dutch States,¹ in all of which a *part* of the people, either absolutely or limitedly, exercised the authority. The difference between these kinds of republics will be understood from the following definitions.

8. A DEMOCRACY,—is when the sovereign power is in the hands of the *whole people*.² The term Democracy is derived directly from the Greek word *Demos*, signifying the *people*.

9. AN ARISTOCRACY,—is when the sovereign power is in the hands only of a *part of the people*.³ This word is likewise of Greek derivation. It is compounded of the adjective *Aristos*, signifying *best* or *wisest*, and *Kratos*, signifying power or strength; the whole word signifies that form of government in which a few of the wisest and best govern. Both *Democracies* and *Aristocracies* are *Republics*.

10. A PARTY,—is any number of persons confederated, by a similarity of objects and opinions in opposition to others.⁴ An illustration of this may be found anywhere. In England, the whigs and tories are two great parties, which have long divided the nation. In France, during the revolution, the jacobins and royalists were violently opposed. On the continent of Europe generally, there are the parties of the *liberals* and *absolutists*. In the United States, the federal and democratic parties divided the country till the termination of the last war.

11. A FACTION,—is any number of persons, whether majority or minority, confederated by some common

¹ Martin, p. 39.

² Spirit of Laws, book 2d, chap. II.

³ Idem.

⁴ Locke.

motive, in opposition to the rights of other persons, or to the interests of community.¹ The *difference* between *party* and *faction* then is, that the former is a *difference of principle*, and is founded on a *general* or *public object*; the latter may have *any motive*, however personal or selfish, and be directed towards *any end*, however little connected with the public welfare. Thus, two divisions of the people differing as to *how* the government shall be administered, are *parties*; but a *section* whose object is to keep one portion of the people from the enjoyment of power, or to aggrandize an individual, or to divide among themselves all the offices of state, is a *faction*.

12. **LEGISLATURE**,—is the *law-making power*.² Thus, in a Republic, it is that branch of the government in which the people have vested the power to make laws.

13. **CONGRESS**,—is a meeting for the *settlement of national affairs*, whether relating to one or more nations.³ In the United States, the *national legislature* is called the Congress; in Europe, a conference of different powers by their ministers, is called a Congress; as the meeting of ambassadors at Laybach was called the Congress of Laybach.

14. **LEGISLATIVE**,—that which relates to *law-making*.⁴

15. **EXECUTIVE**,—that which relates to the *execution* of the laws.⁵ Thus, the chief officer of the government, whether he be called King, President, or Governor, is denominated the *Executive*,—for on him, in most cases, the constitution devolves the duty of *executing the laws*.

16. **JUDICIAL**,⁶—that which relates to the *administration of justice*. Thus, *judicial duties* are those which devolve upon the *judges*, who have to decide upon *what* is law, and to adjudicate between private rights.

¹ Federalist.
⁵ Idem.

² Johnson.

³ Idem.

⁴ Idem.

⁶ Idem.

17. **STATUTE LAW**,—is the express written will of the *Legislature*, rendered 'authentic by prescribed forms.¹ Thus, the statutes of Ohio are the laws enacted by the Legislature of Ohio. It follows, from this definition in connexion with those of *Constitution* and *Legislature*, that statutes can be *binding* only when, 1st, they are executed according to the *prescribed forms*; and, 2dly, when they are *consistent with* the constitution; for, the constitution being the *fundamental law*, created by the people themselves, all other laws are *inferior to it*.

18. **COMMON LAW**,—is that *body of principles, usages, and rules of action* which do not rest for their authority upon the positive will of the legislature.² In other words, it consists of those *customs and rules* to which time and usage have given the sanction of law. Of such, it is plain, must be the great body of the laws of every people; for the rules of business and the usages of society are so variable and complicated, as to be incapable of being made permanently the subject of statute law. The *will* of the legislature being, however, under the limitation of the constitution, that of the *people*, *statute law* is *superior* in force to common law; and wherever they are inconsistent with each other, the latter is abrogated by the former.³

19. **A CORPORATION**,—is defined to be a *body politic*, having a *common seal*.⁴—It is an *artificial*, or *political person*, maintaining a *perpetual succession*,⁵ by means of several individuals, united in one body through a common seal. They have a legal immortality, except so far as they are limited by the law of their creation. These were originally created for purposes of charity, trade, and education; but are now used for all purposes

¹ Kent's Comm. 1 vol. p. 319.

² Idem, 1 vol. 439.

³ Black. Comm. 1 vol. p. 89.

⁴ Johnson.

⁵ Black. Comm.

1 vol. p. 467.

in which it is wished to transmit a common property. Thus, all banks, turnpike companies, colleges, and chartered societies are examples of corporations.

20. **CHARTER**,—is the *act* creating the corporation, or separate government, or the privileges bestowed upon a community, or a society of individuals.¹ It is derived from the Latin term *charta*, signifying a writing.²

21. **A COURT**,—is defined to be a place wherein *justice* is judicially *administered*.³ In our country, and in the New-England States especially, Court has sometimes had another signification, that of the legislative body; thus, the General Court of Massachusetts is the legislature. The former is, however, the correct meaning.

22. **MUNICIPAL**,—relating to a corporation. Municipal laws are *civil* or *internal*, in opposition to national or external laws.⁴ Thus, laws relative to the descent of property are municipal laws; but laws relative to war, the army, and navy are external, and national.

23. **JURISDICTION**,—is extent of legal power.⁵ Thus, a court has jurisdiction over certain things, as all sums over a certain amount, when its legal authority extends over them. A government has jurisdiction over a certain territory, when its power extends over it.

24. **IMPEACHMENT**,—is a public accusation, by a body authorized to make it.⁶ Such were the charges preferred by the British House of Commons against Warren Hastings, Governor-general of India; and in this country by the House of Representatives, against Samuel Chase, one of the Judges of the Supreme Court.

25. **VERDICT**,—is the *true saying* of a jury.⁷ It is the *answer* which a *jury* make to the court and parties,

¹ Black. Comm. 1 vol. 109. ² Sullivan Polit. Class-Book, 49.

³ Black. Comm. 3 vol. p. 23. ⁴ Story's Comm. 159. ⁵ Johnson.

⁶ Johnson; Crabbe. ⁷ 3 Black. Comm. 377.

when the plaintiff and defendant have left the cause to their decision.

26. **DIPLOMACY**,—signifies the intercourse which is carried on between different nations by means of their ministers, or agents.¹

27. **REVOLUTION**,—is a radical change in the government of the country. It may be made in various ways—by force and blood, as in France, 1792; by the expulsion of one family and settlement of another, as in England, 1688, and, in France, 1830; or by a separation of one part of a country from another, as in the United States, in 1776. Thus, also, all acts in opposition to the laws, and which are not legitimate under the constitution, are *revolutionary*, because their tendency is the overthrow of the laws.

28. **EX POST FACTO**,—An *ex post facto* law is a *retrospective criminal law*. A retrospective law is one which acts upon *things already done*, and not merely upon those which are to be done. An *ex post facto* law makes something *criminal* which was *not criminal when done*. Thus, if the legislature should pass an act, declaring that all persons who had not attended church last year should be imprisoned, that law would be *unconstitutional*, because *ex post facto*. But if the legislature should pass an act that those who had attended militia duty last year should be excused from paying taxes, and those who had not should not be so excused, such a law would be *retrospective*, but not *ex post facto*, because not criminal. An *ex post facto* law makes *past acts criminal*, which were *not so before*.²

29. **A BILL OF ATTAINDER**,—is a special act of the legislature, inflicting capital punishments upon persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary

¹ Sullivan's Polit. Class-Book, 225.
212, 213.

² 3 Story's Comm.

course of judicial proceedings.¹ If it inflict a milder punishment, it is called a bill of pains and penalties.

30. **THE BALLOT**,—signifies the *ball*,² or ticket, by which persons vote at an election. *To ballot* signifies voting by *ballot*, i. e. by ball, or ticket. Formerly voting was altogether *viva voce*, that is, by the *voice*,—the elector designating by name the person voted for; now, elections are generally made by *ballot*. The name of the person voted for is written on a ticket, and deposited in a box.

31. **QUORUM**,—is such a number of any body as is necessary to do business.³ Thus, when it is said there shall be eleven directors of any institution, and *seven* shall constitute a quorum, seven is the number necessary to do business; and unless the contrary is expressed, a majority of a quorum only is necessary to a decision. Hence it often happens, that less than a majority of the whole decide important questions.

32. **INDICTMENT**.—An indictment is a *written accusation* of one or more persons, of a crime or misdemeanor, preferred to, and presented upon oath by, a grand jury.⁴

33. **TAXES**.—*All contributions* imposed by the government upon individuals, for the service of the state, are called *taxes*, by whatever name known.⁵ Thus, the tithes imposed upon the people of England for the support of church government is a tax: so also imposts, duties, excises, &c. are taxes.

¹ 3 Story's Comm. p. 211.

² Johnson.

³ *Idem*.

⁴ 4 Black. Comm. 302.

⁵ 2 Story's Comm. 419.

CHAPTER I.

ORIGIN OF THE CONSTITUTION OF THE UNITED STATES.

§ 1. THE continent of North America was chiefly settled by emigrants from Great Britain. The jurisdiction over the new region, as well as the title to its lands, was claimed by the mother country, under the colour of *discovery* and *conquest*. Hence, to acquire the right of property, as well as to sustain themselves against opposition, the authority of Great Britain became necessary to the early colonists. This was given in the form of grants and charters, to companies and large proprietors. Such was the grant of the territory of Massachusetts to the Plymouth Company, and of Maryland to Lord Baltimore.¹

§ 2. There were originally *three* different forms of government in the colonies, viz.—The Charter, the Proprietary, and Royal Governments. The Charter Governments were confined to New-England; the middle and southern colonies were divided between the Proprietary and Royal Governments.

§ 3. The Charter Governments were² composed of a Governor, Deputy-governor, and Assistants, *elected by the people*; these, with the freemen, i. e. citizens, of the colony, were to compose the "General Courts," which were authorized to appoint such officers, and make such laws and ordinances for the welfare of the colony as to them might seem meet. These first forms of government in New-England contained the same principles as, and were doubtless the origin of, our republican system.

¹ 1 Pitkin's Civil History, p. 31.

² Idem. p. 36.

§ 4. The Proprietary¹ governments were those of Maryland, Pennsylvania, the Carolinas, and Jersey. Part of these soon became royal governments. In the proprietary governments, the power of appointing officers and making laws rested in the proprietors, by the advice and assent, generally, of the freemen. In some of them, as in the Carolinas, singular irregularities were found. In all, great confusion took place.

§ 5. In the Royal² governments, which were New-York, Virginia, Georgia, and Delaware, the governor and council were appointed by the *crown*; and the people elected *representatives* to the colonial legislature. The governor had a *negative* in both houses of the legislature; and most of the officers were appointed by the king.

§ 6. These different governments, operating also upon a people of different habits and manners, as the Puritans of New-England, the Cavaliers of Virginia, and the Quakers of Pennsylvania, produced many diversities of legislation and political character. Notwithstanding these, however, the necessities of a common danger from hostile tribes of Indians, and of a common interest from similarity of circumstances, soon induced a union, or confederacy of the colonies. Those of Massachusetts, Plymouth, Connecticut, and New-Haven, as early as 1643, formed a league, offensive and defensive, which they declared should be perpetual, and distinguished by the name of the United Colonies of New-England. This confederacy subsisted for forty years, under a regular form of government, in which the principle of a delegated congress was the prominent feature.

§ 7. A Congress of Commissioners, representing New-Hampshire, Massachusetts, Rhode Island, Con-

¹ Pitkin's Civil History, p. 55.

² Idem. p. 71.

necticut, New-York, Pennsylvania, and Maryland, was held at Albany in 1754. This convention¹ unanimously resolved, that a *union* of the colonies was absolutely necessary for their preservation. They proposed a general plan of federal government, which, however, was not adopted.

§ 8. In October, 1768, a congress² of delegates from nine states assembled at New-York, and digested a bill of rights on the subject of taxation.

§ 9. In September, 1774, an association of twelve states was formed, and delegates authorized to meet and consult for *the common welfare*.

§ 10. In May, 1775, the first congress³ of the thirteen states assembled at Philadelphia; and in July, 1776, issued the Declaration of Independence.

§ 11. In November, 1777, Congress agreed upon the celebrated Articles of Confederation, under which the United States successfully terminated the Revolution. This was the first formation of a general government of all the states, and continued till the adoption of the Constitution in 1788. This, however, had inherent defects, which forced the states to the adoption of the present system. During the Revolution, the pressure of an instant and common danger kept the states in a close union, and incited them to make all possible efforts in the common defence. When that was over, however, mutual jealousies and separate interests, weakening the common bonds, soon proved the utter insufficiency of a mere confederacy for the purposes of national government. Then it was that the ablest heads and the purest hearts in the nation exercised their faculties in devising a new and better form of government. General Washington, in June, 1783, addressed a letter⁴ to the governors of the several states, in which he says, "There are

¹ Kent's Comm. p. 191, 192.

² Idem. 193.

³ Idem. 195.

⁴ Marshall's Life of Washington, vol. 5, c. 1, p. 46.

four things which I humbly conceive are *essential* to the *well-being*, I may even venture to say, to the *existence* of the United States as an *independent power*. 1. An *indissoluble union* of the states under *one federal head*. 2. A sacred regard to public justice. 3. The adoption of a proper peace establishment. 4. The prevalence of that pacific and friendly disposition among the people of the United States which will induce them to forget their local politics and prejudices."

§ 12. Under the first head he remarked that, "It is only in our united character that we are known as an empire, that our independence is acknowledged, that our power can be regarded, or our credit supported among foreign nations. The treaties of European powers with the United States of America will have no validity on a dissolution of the Union. We may find by our own unhappy experience, that there is a natural and necessary progression from the extreme of *anarchy* to the extreme of tyranny; and that arbitrary power is most easily established on the ruins of liberty abused to licentiousness." Such were the sentiments of Washington, and such were those then of the nation.

§ 13. In January, 1786, the Legislature of Virginia recommended a meeting of commissioners from the several states to review the powers of government. The delegates of five states met at Annapolis, but adjourned, proposing a general convention at Philadelphia.

§ 14. In 1787, the convention of delegates from twelve states was convened, and after much deliberation, formed the present Constitution of the United States.

§ 15. By resolution¹ of the convention, it was directed to be carried into effect when ratified by the conventions of nine states chosen by "the people thereof." That ratification, after much opposition, scrutinizing discus-

¹ Marshall's Wash. 5 vol. p. 129.

nion, and the adoption of several amendments it finally received, and all the states, eventually assenting to its provisions, became members of the Union. In 1789 it went into practical operation, and from that period to this, more than forty years, has withstood unharmed the various violent influences of local feuds, opposing interests, domestic insurrection, and foreign violence.

§ 16. We have seen that, at several different periods, viz. 1643, 1754, 1765, 1774, 1777, and in 1787, the territories composing what is called the United States formed associations for the purposes of a common government and general welfare. Let us now examine how these were originally constituted, and in what manner modified by time and experience.

§ 17. By the articles of *confederation* made in 1643, between the colonies of Massachusetts, Connecticut, and New-Haven, it was expressly declared to be a *league*, under the name of the United Colonies of New-England. The chief points in this confederation were,—
1st. That each colony should have *peculiar jurisdiction and government within its own limits*. 2d. That the quotas of men and money were to be furnished in *proportion to the population*, for which purpose a *census* was to be taken from time to time of such as were able to bear arms. 3d. That to manage such matters as concerned the whole confederation, a Congress of two commissioners from each colony should meet annually, with power to weigh and determine all affairs of *war and peace, leagues, aids, charges, and whatever else* were proper concomitants of a confederation offensive and defensive; and that to determine any question, three-fourths of these commissioners must agree, or the matter is to be referred to the General Courts; 4th. That these commissioners may choose a president, but that such president has no power over the business or proceedings. 5th. That neither of the colonies should engage in any war without consent of the general com-

missioners. 6th. That if any of the confederates should *break* any of these articles, or otherwise injure any of the other confederates, then such breach should be *considered*, and *ordered* by the commissioners of the *other colonies*.

§ 18. Now it will be observed that this confederacy was, by agreement, a mere *league*, for motives of amity, for objects of general offence and defence. *As such*, it was as good a model as any which history presents us ; but *as a government*, it was utterly inefficient : its principal defects in the last point of view were, 1. The want of an Executive, without which it could never act *as a whole*. All the acts of the commissioners had to be enforced by each separate colony : they did not act upon individuals. 2d. The want of a General Judiciary, by which offences arising between the several members, or against the whole confederacy, might be taken cognizance of. 3d. The want of any general power to obtain credit or emit money. In short, this league did not pretend to be a *government*, and was deficient in nearly all the attributes of *sovereignty*.

§ 19. Upon the last provision, that providing a remedy for breaches of the league by one of the confederacy, it is worthy of remark, that it never entered into the heads of people *then*, that it was possible for one party to a compact to make *itself* *judges of its own breaches of it* : on the contrary, it was provided that such breaches should be judged of by *the other members of the confederacy*. It was reserved for a much later period of history, and it would seem for far more ingenious men, to divine a mode by which a party to a contract can at once make itself a judge of its own violations of it, and invalidate at pleasure its provisions.

§ 20. The next plan of association was that formed by the commissioners who met at Albany in 1754. It was not accepted by the mother country, but may serve to show what progress in ideas of government had then

been made by the colonists. It is remarkable that the scheme proposed did not purport, like the other, to be a *league*, or confederation, but a *plan for one general government*. Its principal provisions were,—1. That the general government should be *administered* by a president-general appointed by the crown, and a grand council chosen by the representatives of the people in their general assemblies. 2. That the council should be chosen every three years, and shall meet once each year. 3. That the assent of the president be necessary to all acts of the council, and that it is his duty to see them executed. 4. That the president and council may hold treaties, make peace, and declare war with the several Indian tribes. 5. That for these purposes they have power to levy and collect such duties, imposts, and taxes as to them shall seem just.

§ 21. It will be seen that this was a much nearer approach to an organized government than the confederacy of 1643. It provided for a strong *executive*, but was without the sanction of a general judiciary, and made no provision for regulating the currency.

§ 22. We come now to the *articles of confederation*. During the early part of the Revolution, the powers of a general nature were executed without question or hinderance by a ¹congress of deputies from the several states. Patriotism and a common danger absorbed all other principles, and made ordinary ties unnecessary. A universal opinion, however, prevailed in favour of union, and after much deliberation, ²Congress in November, 1777, agreed upon the articles of confederation. They were, after various delays, ratified by the different states; the principal objection being in respect to the wild lands, which were claimed by several of the states, but which others urged should go to bear the common burthen. In the sequel, these lands were nobly ceded

¹ Journal of Congress, vol. 2, p. 475.

² 1 Kent Comm. 197.

by the states who held them, to the common benefit of the Union.

§ 23. The Articles of Confederation provided,—

1st. That the style of the Confederacy should be the “United States of America.”

2d. That each state should retain its sovereignty, independence, and such rights as were not delegated to the general Congress.

3d. That the object of the league was the general welfare, and the common defence against foreign aggression.

4th. That the citizens of one state shall have the privileges of citizens in another, and that full faith and credit shall be given to the records, acts, and judicial proceedings in another state.

5th. That for the management of the general interests, delegates shall be annually appointed to meet in Congress,—each state having not less than two nor more than seven ; and that in determining questions in Congress, *each state shall have one vote.*

6th. That no state shall, without the consent of Congress, enter into any treaty or alliance with any foreign power or nation, or with any other state ; nor lay any imposts or duties interfering with any stipulations contained in any treaty made by Congress ; nor keep any vessels of war or armed forces in time of peace, except such as Congress may deem necessary ; nor engage in any war without the consent of Congress, unless the state be actually invaded, or the danger imminent ; nor grant letters of marque, unless such state be infested with pirates.

7th. All charges for the general welfare shall be defrayed out of a common treasury, which shall be levied in proportion to the value of land within each state.

8th. The “United States in Congress assembled” shall have the exclusive right of making peace and war ;

entering into treaties and alliances ; granting letters of marque, and establishing courts and rules for the trial of piracies and felonies, and determining questions in relation to captures ; and that the Congress have the power to determine all questions and differences between two or more states, concerning any cause whatever, which authority shall be exercised by instituting a court in manner and form as provided, where judgment shall be final and decisive and that they have power to fix the standard of weights, measures, and coin ; establish Post-offices and commission Officers ; that they shall have power to appoint a committee of the states, and such other civil officers as may be necessary to manage the general affairs of the United States under their direction ; to elect their President ; to fix the sums of money to be raised ; to borrow money and emit bills of credit ; to agree on the number of forces to be raised, which are to be distributed among the states in proportion to their white inhabitants ; that "the United States" shall not exercise these powers, unless nine states assent to the same, nor shall any question except that of adjournment be determined unless by the votes of a majority of the states.

9th. It is further provided, that the committee of the states, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, or any nine of them, shall think proper to vest them with.

10th. All debts contracted under the authority of Congress shall be deemed and considered as a charge against the United States, for which the public faith is pledged.

11th. That every state shall abide by the *determinations* of Congress upon the questions submitted to it, and the *union* shall be *perpetual*.

§ 24. Such is a synopsis of the articles of confederation, under which the United States terminated the war

of the Revolution, and continued till the adoption of the Constitution. It will be remarked,

1. That the states still assumed the style of a league or confederacy, and that, 2dly, they had notwithstanding granted away many attributes of sovereignty, even greater than those proposed to be vested in the President and Council by the plan of 1754.

§ 25. This Confederacy had many obvious and palpable deficiencies, as a government, principally, however, in the *mode* and process of its administration.

1. There was still wanting an *Executive* in form, though nearly all its powers were granted to Congress and the "committee of the states."

2. No general *Judiciary* was provided; yet they had gone so far as to provide a Marine or Admiralty Court, and a general tribunal to settle conflicts and disputes between the several states.

3. The great deficiency was, that the articles of confederation did not act upon *individuals*, but upon the *states*; and that to raise men and money, it was necessary to act through the medium of many distinct governments.

§ 26. By a comparison of the original association of 1643, the plan of 1754, and the articles of confederation, we find that the minds of the colonists had gradually tended from the notion of separate sovereignties to that of a general and united government. Each change, founded on experience, had given *additional strength* to the confederacy. Thus the association of 1643 was a simple league, existing by means of treaties, and exercised through commissioners; and though possessing many of the attributes of sovereignty, holding them only through an *alliance*. The plan of 1754, though not adopted, was that of a general government, and had a strong executive. The articles of confederation, though reverting back to the form of a confederacy, greatly increased, in *theory*, the powers of government:

For, example, it superadded to the powers of former Congresses those of emitting bills of credit, establishing Marine Courts, and judging between the states. Under this confederation, the United States, by the peace of 1783, achieved their separate and independent existence as a nation. Yet, we have already seen, it was found insufficient for the purposes of a stable government, and how, in 1787, the present Constitution was formed and adopted.

§ 27. In this chapter we have established these propositions :—

1st. That the idea of a union of the colonies originated in the very earliest stage of their existence.

2d. That their idea was that of a government exercised for the *general welfare*, and founded upon a *representation* of the *people*.

3d. That for this purpose they from time to time formed *leagues* and *confederacies*.

4th. That these associations were made *closer* and *stronger*, as time and experience progressed.

5th. Lastly, that they were all merged in the “*more perfect union*” and general government established by the Convention of 1787.

CHAPTER II.

CONSTITUTION OF THE UNITED STATES.

PREAMBLE.

§ 28. *WE, the People of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.*

§ 29. In this preamble are asserted,—1st, the power making the Constitution, “We the People,” &c. ; 2dly, the object for which it was formed, the *more perfect union, general welfare, &c.* ; 3dly, the subject of it, the United States.

§ 30. The first position, that “We the People do ordain,” &c., is the foundation of the most solemn inquiry which ever agitated the American people,—whether this phrase be a mere nullity, or whether the Constitution was indeed formed by the *whole people* ?

§ 31. It is one of the rules¹ for *interpreting laws*, that they must be understood according to the context, i. e. the whole must be *taken in connexion*. This passage will, therefore, be better understood when we have reviewed the entire Constitution. The preamble throws light upon the instrument, and the instrument upon the preamble. It is sufficient to remark here, that the terms used are in perfect accordance with the mode by which the Constitution was ratified : this was by *con-*

¹ Blackstone's Comm. 59.

ventions¹ of the *people*, and not by the *Legislatures* of the *states*. On the other hand, the convention² which formed the Constitution was composed of delegates chosen by the state Legislatures. The necessary inference is, that the *states*, in their official capacity, proposed the Constitution, and the *people*, by ratifying it, gave it *authority*: it is therefore a *government founded by separate states*, but receiving its *sanction and validity* from the *whole people*.

§ 32. 2d. The objects proposed are exactly consistent with this idea. A *perfect union*, and a *government* legislating for the *general welfare*, are incompatible with *separate and independent sovereignties*. The terms *independence* and *sovereignty*, used in relation to matters of government and politics, must of course be understood in a *political sense*, and according to our definition. There are some common acceptations of these terms in which a much lower importance is attached to *sovereignty*. Thus, a man may be perfectly sovereign in his own house, and yet be subject to the laws of society. An animal may be utterly independent of another animal, and yet a member of, and subject to the laws of, the animal kingdom. In this sense *the states*, considered as composing a society, are sovereign and independent in their *domestic and municipal relations*. These terms, in their political sense, have a higher meaning: as applied to *nations*, independence does not admit of a *close union*, nor sovereignty of another government legislating for the *general welfare*.

THE CONSTITUTION.

§ 33. The Constitution of the United States contains seven articles,—to which were added several miscellaneous amendments.

Article 1st. Relates to the Legislative Power.

¹ 2 Pitkin's Civil Hist. p. 264.

² *Idem*, 219.

Article 2d. To the Executive Power.

Article 3d. To the Judicial Power.

Article 4th. To the *validity of Public Acts and Records*,—the rights of *Citizenship*,—the admission of *new States*,—and the forms of *State Governments*.

Article 5th. Relates to the mode of amending the Constitution.

Article 6th. To the national *faith* and the binding *force* of the Constitution.

Article 7th. To the mode of its ratification.

§ 34. That we may have an accurate view of the Constitution, not merely as it is written, but as it has been construed, and acted upon by the various departments of the government, we shall take these Articles up by sections, and consider them in connexion with judicial and other decisions upon them.

ARTICLE I.

§ 35. SECTION 1st. *All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*

§ 36. Whenever power is vested in a representative body, it is usually divided between a body of direct representatives and one more remote and differently constituted. Thus, in Great Britain, the legislative power is vested in the Commons and the House of Peers; so also in France, the House of Deputies and the Peers; so also the legislative power of the several states is similarly vested in two houses. The provision is a wise one, in rendering measures less precipitate, and in removing one portion of the Legislature from the immediate action of popular passion, while it retains it within the ultimate influence of the people.

§ 37. SECTION 2d. First Clause. *The House of Representatives shall be composed of members chosen every second year by the people of the several states; and the*

electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state Legislature.

§ 38. About the frequency of elections there has been much dispute. In England, the period for which a representative is chosen is seven years ; in some of the states it is two, and in some only six months. In the Constitution it is fixed at two years, as being a period sufficiently long to give the people some time for reflection, and yet sufficiently short to secure the responsibility of the representative.

As the *electors* of the different state Legislatures varied materially, it was thought proper that the representatives from each state should be chosen by the people, in the manner they had appointed for the choice of their own Legislature.

§ 39. 2d clause. *No person shall be a representative who shall not have attained to the age of 25 years, and been 7 years a citizen of the United States, AND who shall not, when elected, be an inhabitant of that state in which he shall be chosen.*

§ 40. The propriety of requiring a seven years' citizenship cannot be doubted ; *aliens* cannot be regarded as a part of the nation ; and length of time, as well as naturalization, is required to make them acquainted with the interests of the country.

§ 41. A representative must be an *inhabitant* of the state from which he is chosen. In respect to this provision, a question has arisen, whether a man residing at the *seat of government* in his *official capacity* ceases to be a *legal inhabitant* of the state of which he was a citizen ? It was decided in the case of Mr. John Bailey,¹ a representative from Norfolk district, Massachusetts, who had for several years been a clerk in the department of State, that an official residence in the District of Colum

¹ See Journals of Congress.

bia did not take away any of his qualifications as a citizen of the state whence he came. This decision will probably be adhered to, as a contrary one would at once destroy all the political privileges of those who become members of the government, and therefore would not have been within the spirit of the Constitution.

§ 42. 3d clause. *Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such a manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three; Massachusetts eight; Rhode Island and Providence Plantations one; Connecticut five; New-York six; New-Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North Carolina five; South Carolina five; and Georgia three.*

§ 43. It is to be observed, that the *representative population* is not the *whole population* of the United States; after including "all free persons," "excluding Indians not taxed," it includes "three-fifths of all other persons." The *other persons* here mentioned are *slaves*, and consequently the states holding slaves have a representation for three-fifths of the whole number: thus, in some of the states, the slaves exceed the whites in number, and as these slaves exercise no political privileges themselves, it follows that their masters hold double the political power held by the citizens of the non-

slave-holding states. Of this, however, they do not, and ought not, to complain, as it was the *necessary* result of the *compromise*, without which it is probable the Union never could have been formed.

§ 44. It is said that the *electors* must be the same as those for "the most numerous branch of the state Legislature." Some of these electors, as in New-Jersey, North and South Carolinas, must have a *property qualification*, and others again come in under *universal suffrage*; hence the qualifications for electors are not uniform.

§ 45. The *mode* of electing representatives to Congress is not the same in the several states. Thus, in some, it is by general ticket, as in Connecticut and New-Jersey: in others, by the district system, as in New-York and Pennsylvania.

§ 46. Under this section has arisen a question in respect to the mode of apportioning representatives. Congress passed a law,¹ giving a number of representatives equal to the *whole population* of the United States *divided* by 30,000. This gave a larger number than would arise by dividing the population of the *respective states* by the same number, and adding together the quotients. The additional members were given to the states having the *largest fractions*. This principle was objected to by General Washington, who was then President, and the bill returned with his reasons. The objection was, that the Constitution required that the representation should be apportioned among the *several states*, and not according to the whole population of the Union. The bill was returned to Congress, the matter again discussed, and the objectionable feature struck out. The same principle came up under the census of 1830.² The House of Representatives passed the apportionment bill in the usual form, and the Senate inserted a provision, making the number for a single representative a *divisor* of

¹ Pitkin's Civil Hist. 351. ² Journals of Congress, 1832.

the whole representative population of the United States, and giving a representative to the largest fractions. The House would not agree to the principle, and the Senate finally receded from their ground. It may therefore be now considered as a settled construction of the Constitution, that the ratio of representation must be a common divisor of the numbers in the *several states*, and not in the whole Union.

§ 47. This section likewise requires, that an enumeration should be taken every ten years of the inhabitants of the United States. This commenced in 1790 by Act of Congress, and has been continued ever since. The *ratio* of representation has been altered at each census. The ratio, that is, the common divisor, or number which is entitled to a representative, has been constantly increasing, but the increase being in a less proportion than that of the population, the number of representatives has likewise increased.

§ 48. Clause 4th. *When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill up such vacancies.*

§ 49. The necessity for this clause frequently arises, by virtue of the death or resignation of members of Congress. In some states, as in Massachusetts and Vermont, repeated elections have to be held before a choice can be made, in consequence of a majority of the votes being required to elect.

§ 50. 5th Clause. *The House of Representatives shall choose their Speaker, and other officers, and shall have the sole power of impeachment.*

§ 51. The power of impeachment is one of the most important under the Constitution. It is the only mode in which the *Judiciary* is made responsible, and it is a salutary and necessary check upon the President and his officers.

§ 52. The most prominent examples of impeachment

under the Constitution are those of Judges Chase and Peck.¹ In March, 1804, the House of Representatives, by resolution, impeached Samuel Chase,—one of the Judges of the Supreme Court,—of malversation, improper and arbitrary conduct in office. In 1830, they did the same in relation to James H. Peck, District Judge for the state of Missouri. They were both acquitted.

§ 53. The *mode* of impeachment is this: the House pass a resolution to impeach, and then appoint a *committee* to manage the impeachment, and prepare the *articles*; articles making a plain statement of the case, in the manner, but with less formality than an indictment, are then adopted by the House. The Senate are then officially informed that such charges are preferred by the House, and *resolve*, that on a given day the Senate will sit as a Court of Impeachment. In the mean time, a summons to appear and answer is served upon the party, and as many subpoenas for witnesses are issued as the managers or the party accused may direct. On the day appointed for trial, the appearance or non-appearance of the party is recorded, and at 12 o'clock, the Secretary of the Senate administers an oath to the President of the Senate, that "he will do impartial justice according to the Constitution and laws of the United States." The same oath is then administered by the President to each senator present. ²Council are then heard for the respective parties; all motions are addressed to the President, and decisions are made by *ayes* and *nays* without debate. Witnesses are examined and cross-examined, in the usual manner. Questions put by senators are reduced to writing, and put by the President. It requires *two-thirds* to make a conviction.

¹ See Journal of the 8th Congress.
Senate on the trial of S. Chase.

² Rules adopted by the

§ 54. SECTION 3D. 1st Clause. *The Senate of the United States shall be composed of two senators from each state, chosen by the Legislature thereof, for six years ; and each senator shall have one vote.*

§ 55. In the Senate, each state is *equally* represented. It has been said by an eminent jurist,¹ that this feature of the Senate, and the mode of its election by the Legislatures, are evidences of the *separate* and *independent existence* of the states. If, by *separate* and *independent* be meant any thing more than *local* and *municipal* independence, the truth of the proposition is not readily seen. The counties of Great Britain were till recently equally represented in the House of Commons ; so also are the counties of the state of Maryland in the state Legislature ; yet, who would attribute a *separate existence*, or independent power, to these counties beyond mere local county purposes ? The very contrary of this position, as it respects the United States, is shown from the fact, that the Senate votes, not by *states*, but by *persons* : hence, the members from a given state may, and often do, vote on opposite sides of a question. Here the representation of the state is neither separate nor independent, but mixed up with the whole mass. It is no doubt true, that this provision was intended to secure to the people of each state an equality of political power in the Senate ; but it no more proves the *separate existence*, *independence*, or sovereignty of the states, than the government of Maryland acknowledges the *separation* and *independence* of its *counties*. As to the election of the senators by the state *Legislatures*, it is only the *mode*, by which the *people* of the state exercise their power. In the same manner, the counties in Maryland send an equal number of delegates to a convention, which convention choose the state Senate ; now the convention is the mere *form* through which the *people express their*

¹ 1 Kent's Comm. 211.

will;—it is no acknowledgment of any separate authority in those counties.

§ 56. As it is provided, that the *senators* shall be chosen by the *Legislatures*, it is settled by the practice of most of the states, that they may be chosen by *joint ballot* of both houses, voting by individuals, and not necessarily by the Legislature in its official capacity, each house having a negative on the other.

§ 57. 2d Clause. *Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the Legislature of any state, the executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies.*

§ 58. The members of the first Senate were, in conformity to the Constitution, divided by *lot* into three classes, the terms of service of which expired in two, four, and six years, and ever since one-third has been removed every second year. In drawing the lots, care was taken that but one vacancy should occur at the same time in the representation of any one state.

§ 59. It has been decided¹ under this clause, that the Governor cannot make an appointment during the recess of the Legislature, in *anticipation of a vacancy*. Thus, the term of James Lanman, senator from Connecticut, expired on the 3d March, 1825. The President had convoked the Senate to meet on the 4th of March. The Legislature of Connecticut did not meet till May.

¹ Gordon's Digest of the Laws of the United States, 1827; Appendix, note 1.

The Governor in February appointed Mr. Lanman to sit after the 3d of March. The Senate decided that such an appointment cannot be constitutionally made; the vacancy must first occur.

§ 60. 3d Clause. *No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.*

§ 61. All these limitations are manifestly founded upon propriety. It is probable they might have been made still stronger without injury to the public interests.

§ 62. 4th Clause. *The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.*

§ 63. Legislative bodies have generally the power of choosing their own presiding officer; in this instance, however, the Constitution conferred the office of presiding over the Senate to the Vice-President; one reason may have been that he has no other duties to perform, and the chair of the Senate conferred dignity upon him. The casting vote of the Vice-President has been frequently given, and in some very important cases.

§ 64. In 1826,¹ a question arose whether the Vice-President had the power of preserving order independent of the rules of the Senate? The then Vice-President, Mr. Calhoun, decided that he had not. In 1828, however, the Senate made a rule, that "every question of order shall be decided by the President without debate, subject to appeal to the Senate."

§ 65. 5th Clause. *The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.*

§ 66. The power of choosing a President pro tempore

¹ 1 American Annual Register, 86, 87; 3 Idem. 39.

is constantly exercised, the Vice-President being frequently absent.

§ 67. 6th Clause. *The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath, or affirmation. When the President of the United States is tried, the Chief-Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.*

§ 68. The impeaching power, and some of the rules of conducting an impeachment, have been heretofore noticed.¹ This mode of impeachment and trial under the Constitution is derived from the British Parliament, where the Commons have the sole power of impeachment, and the House of Lords the power of trial. It seems, however, to have been introduced into the Common Law from the customs of the Germans; among them, however, the people were both accusers and judges.

§ 69. In the trial of the President, the Chief-Justice presides, in order to preclude the Vice-President, who, in case of a vacancy, succeeds to the Presidency, from having any part in the creation of that vacancy.

§ 70. 7th Clause. *Judgment in case of impeachment shall not extend farther than to a removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under the United States; but the party convicted shall nevertheless be liable, and subject to indictment, trial, judgment, and punishment according to law.*

In England, the judgment upon impeachments extends, not only to removal from office, but to the whole penalty attached by law to the offence. The House of Lords may, therefore, inflict capital punishment, banishment, or forfeiture of goods, according to its direction.²

§ 71. In another place³ we have stated the mode of

¹ Sections 51, 52, 53.

² Com. Digest. Parliament, L. 44:

³ Section 53.

procedure in the Senate upon the trial of impeachments. When the evidence is gone through, and the parties have been heard, the Senate proceed to consider the case. If debates arise, they are in secret; a day is then assigned for a public decision by *yees* and *nays*. When the court has met, the question is propounded by the President of the Senate to each individual member by name: whereupon the member rises and answers, guilty, or not guilty, as his opinion is. If upon *no one* article the party is found guilty by two-thirds of the Senate, he is declared acquitted by the President of the Senate. If guilty, the Senate proceed to fix and declare the punishment.

§ 72. SECTION 4TH. 1st Clause. *The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.*

§ 73. Under this section *Congress* has the power to appoint the *times* and *modes* of choosing representatives and senators. This power they have never exercised, and the time and mode of choosing them is consequently very various. In some states, as New-York and Ohio, members of the House of Representatives are chosen in the year previous to the dissolution of Congress; in others, as New-Hampshire and Virginia, in the spring following; and in others again, as in Indiana, in the following summer. Congress has, except on two occasions, met on or about the first Monday in December; but suppose, that from the emergency of the case, they should appoint a day early in the spring; in what manner would those states now electing representatives in the summer, be represented? The power of regulating the times and places of electing representatives was thus given to Congress, in order that it might have the means of its own preservation; otherwise, the states might prevent an election.

§ 74. 2d Clause. *The Congress shall assemble at least once in every year ; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.*

§ 75. This provision was inserted in order to establish, beyond the possibility of prevention, the *annual sessions* of Congress ; the time of meeting within the year has been fixed, but Congress may change it, and on two or three occasions they have held extra sessions.

§ 76. SECTION 5TH. 1st Clause. *Each House shall be the judge of the elections, returns, and qualifications of its own members ; and a majority of each shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such a manner and under such penalties as each House may provide.*

§ 77. Some number must be fixed to constitute a *quorum* ; it is here fixed at a majority, upon the general principle recognised in all the institutions of the United States, that *the majority must govern*. If any less number were required to make a quorum, the *minority*, by acting in the absence of the majority, might govern ; and if a larger number were required, the minority might prevent legislation by absenting themselves.

§ 78. The House and Senate regularly appoint committees on *elections*, which investigate all contested claims to seats, and all doubtful returns, qualifications, &c. The committees report to the House, which makes the ultimate decision. From this decision there is no appeal, and it is obvious there ought not to be, for the power could be nowhere else lodged so safely.

§ 79. 2d Clause. *Each House shall determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.*

§ 80. The *rules of proceedings* enacted are numerous, and will be considered in another place.

§ 81. The power to "punish its members for disorderly behaviour" has been frequently exercised. Thus, in 1797, William Blount, a senator from Tennessee, was *expelled* for "a high misdemeanour, entirely inconsistent with his public trust and duty as a senator." His offence was an attempt to seduce an Indian agent from his duty, and alienate the affections of the Indians from the authorities of the United States. The offence was not statutable, nor committed in his official character, nor committed during the session of Congress, nor at the seat of government. Yet he was expelled from the Senate, and afterward impeached.¹

§ 82. It is, therefore, settled by the Senate, that expulsion may be for any misdemeanour, though not punishable by any statute, which is inconsistent with the trust and duty of a senator.

§ 83. Although there is a power enumerated given to Congress to punish *disorderly behaviour*, yet there is none expressly given to *punish contempts*. Yet this power, being absolutely necessary to the order and security of the House, has been adjudged, both by Congress and the Supreme Court, to be a necessary incident to the powers of Congress.

§ 84. This power was exercised by the House of Representatives in the case of Robert Randall, in 1795, for an attempt to corrupt a member.

§ 85. The same point was solemnly decided, by the Supreme Court in the case of *Anderson vs. Dunn*.² One Anderson was committed for a contempt of the House, and placed in the custody of the sergeant-at-arms. An action of trespass was brought against the officer, and the case carried to the Supreme Court. That tribunal decided that the House had the power, and that it extended no farther than imprisonment, and continued no longer than the *duration* of the power that

¹ 2 Story's Comm. 299.

² 6 Wheaton, 204.

imprisoned, and consequently terminated with the dissolution of Congress.

§ 86. The same power was exercised in 1800 by the Senate in the case of William Duane, who was found guilty of a printed libel on the Senate, and punished with imprisonment. So also by the House of Representatives, in the case of Samuel Houston, who assaulted a member for words spoken in debate, and was found guilty of a contempt and reprimanded.

§ 87. 3d Clause. *Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.*

§ 88. The yeas and nays, being the means by which the constituents discover the conduct of their representatives, are often called for, and generally granted. No important question is agitated upon which the yeas and nays are not recorded. This provision is very important; for, as the periods of elections are short, the representative is constantly held responsible to the people, and there is no scrutiny which he dreads more than that into his recorded votes.

§ 89. 4th Clause. *Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.*

§ 90. By this provision, it is impossible that either House should prevent the progress of business, and each has a complete negative on the other.

§ 91. SECTION 6TH. 1st Clause. *The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to or*

returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

§ 92. The *compensation* allowed by Congress for their own service was, and is now, a *per diem* allowance, with *mileage* for the distance travelled, going and returning. Congress, several years since, enacted that each member should receive a fixed compensation; thus, in fact, making themselves salary officers. This was received by the people with so much *censure* and *condemnation*, that the next Congress was obliged to *repeal* the law.

§ 93. The *privilege* from *arrest* during attendance upon *legislative* business is derived from the Saxon institutions. It was the privilege of the members of the Saxon Wittenagemot,¹ or assembly of wise men, and thence has descended through all the systems of English and American Law.

§ 94. The *effect* of this privilege is, that the arrest of a member is unlawful, and a trespass for which he may maintain his action. He may also be discharged upon a writ of Habeas Corpus,² and the arrest may be punished as a contempt of the House.

§ 95. In going to and returning from Congress, ample time is allowed, and a little deviation does not take away the privilege.

§ 96. The privilege from arrest takes place by force of the election, and before the member has taken his seat, or is sworn.

§ 97. This privilege does not extend to *felony*, *treason*, or *breach of the peace*; and the terms *breach of the peace* being general, have been decided to extend to all *indictable offences*, as well as those which are only constructive breaches of the peace.³

§ 98. The privilege of speech and debate does not

¹ 1 Hume, 155.
Comm. 166.

² 2 Wilson's Rep. 151.

³ Blackst.

extend beyond the limits of legislative or parliamentary duty. Thus, for a speech merely delivered in the House, a member cannot be questioned; yet, if he *publish* the speech, and it contain a *libel*, he is liable to an action for it, as in any other case.¹

§ 99. 2d Clause. *No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.*

§ 100. The first part of this clause was inserted as a safeguard against *venality*; yet were there really any danger from such a source of corruption, it would not seem to be prevented by this provision, for it extends only “during such time,”—the time *for which he was elected*, which is so short as to leave the full force of promised reward beyond it.

§ 101. The second provision, which prevents office-holders from holding a seat in Congress, is very unlike the Constitution of the British Parliament, by which any member of the ministry may hold a seat in the House of Commons. By this means there is certainly a degree of responsibility on the part of the ministry, which is unfelt by the executive officers of our government, who communicate with Congress only through the details of a report, or the columns of a newspaper. The provision was inserted, however, for the purpose of preventing an undue influence of the government upon the action of Congress.

§ 102. SECTION 7TH. Clause 1st. *All bills for raising revenue shall originate in the House of Representa-*

¹ 1 Maule and Selwyn's Rep. 273.

tives ; but the Senate may propose or concur with amendments, as on other bills.

§ 103. This provision is borrowed from the British Constitution, where the *Commons*, or Lower House, are the exclusive representatives of the people. In the United States it has been continued, in consequence of the senators being rather the representatives of the state governments than of the people.

§ 104. *Bills for raising revenue* do not include every bill which brings money into the treasury ; for, bills for establishing the *Post-office*, and the *Mint*, originated in the Senate ; so also bills for the sale of public lands, though directly productive of money, are not included in this phrase : its proper meaning is confined to *bills to levy taxes*.

§ 105. 2d Clause. *Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States ; if he approve, he shall sign it ; but if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.*

§ 106. The power of the President to return bills with his objections has been repeatedly exercised. It

was exercised, we have seen, by General Washington, in respect to the bill fixing the ratio of representation ; by President Monroe, in 1817, on the Internal Improvement Bill ; by President Jackson on the Maysville road, the United States Bank, and in other cases.

§ 107. This power, and the mode of its exercise, are so clearly defined by the Constitution as to admit of little doubt or misconception. If the President abuse the Veto, it is presumed the representatives of the people will pass the bill in question, by the constitutional majority of *two-thirds*.

§ 108. If a bill be not presented to the President more than *ten days* before the end of the session, the President has it in his power to defeat it, by simply withholding his signature, for he is obliged to return it with objections (if he has any) only within ten days ; of course, if Congress by adjournment prevent that return within that time, the bill must fail if not signed by the President.

§ 109. 3d Clause. *Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.*

§ 110. The "order, resolution, or vote" to which the President's signature is, by this section, required, are not those orders, resolutions, and votes which relate to the separate and internal government of each House. Rules of order, resolutions in respect to their own conduct, judgments upon their own elections, votes of censure and thanks, being matters exclusively relating to themselves, do not come within the scope of this provision.

§ 111. SECTION 8TH. Clause 1st. *The Congress shall have power to lay and collect taxes, duties, imposts,*

and excises ; to pay the debts and provide for the common defence and general welfare of the United States ; but all duties, imposts, and excises shall be uniform throughout the United States :

§ 112. The first part of this clause, divided by the semicolon, does *not* confer upon Congress *two separate powers*, one "to lay and collect taxes," &c. and the other to "provide for the general welfare;" but it is the grant of *one power*, viz. "to lay and collect taxes," &c. —limited by the *object*, which is *for the purpose* of "providing for the general welfare."¹

§ 113. *Taxes* are of two kinds,—*direct* and *indirect*. Direct taxes are all burthens imposed immediately upon the person or estate of the citizen; thus, a tax upon houses, lands, money, &c. is a direct tax: indirect taxes are the burdens imposed upon articles of consumption, and chiefly upon imported articles; thus, the revenue, or duty levied upon each yard of broadcloth, or cotton sheeting, brought to this country from *abroad*, is an indirect tax.

§ 114. Indirect taxes increase the price of imported articles, and thus act as a burden upon those who purchase them. The difference between the two modes of taxation is this: *direct* taxes act *directly* upon the person and property of the citizen, and is *independent* of his will; *indirect taxes*, by being imposed upon articles imported from *foreign countries*, or used in consumption, leave the people at liberty to pay them or not, by *using* or *not using* the articles upon which they are imposed. Thus, a farmer cannot avoid the payment of a tax levied upon his land, but he may avoid the payment of the duty upon coffee, by not using it. And previous to the Revolution, such was the fact, as we all know, in relation to the duty upon tea. The people, by a patriotic impulse and

¹ Jefferson's Opinion on the Bank of the United States, 1791; Monroe's Message, May, 1822; Hamilton's Report, Dec. 1791; 9 Wheaton's Rep. 199.

common consent, abstained from the use of tea, and thus prevented the levying of the duty.

§ 115. In general, all the necessities of life, such as coarse clothing, bread, meat, fruit, wood, and iron, are the productions of our own country,—so that the whole import duty, or nearly the whole revenue of the country, as now levied, is a mere matter of voluntary contribution upon the part of each and every citizen; hence it is that *indirect taxes*, being in a measure unfelt and voluntary, are comparatively popular, while *direct taxes* are more or less odious.

§ 116. The terms *imposts* and *duties*, as now used, are nearly synonymous;¹ but originally, the word *duty* had a general signification, as it respects taxes, of which *imposts* was a particular application. Now they are applied indiscriminately to the revenue obtained from imported articles.

§ 117. The term *excise* is defined to be a duty on *commodities*, but of late it has been confined to a tax on *domestic distilled liquors*. In this sense it is a tax, not only on the *productions* of the country, but also a tax on the *manufacture* of them: it is a tax, at once, upon the raw material and the *labour* put upon it. Such a double duty, it is obvious, could never be imposed by the Legislature, nor borne by any people, but from a conviction in a large portion of the community of the *disastrous influence of spirituous liquors*, and a strong desire to repress their use. Even with this conviction among the intelligent, an *excise duty* has never been imposed but in time of great public emergency, and then at the risk of civil war. In the year 1793, Congress laid an excise duty on distilled spirits, and appointed inspectors, officers, &c. to collect it. This law became so excessively odious to a portion of the people, that notwithstanding the unrivalled popularity and commanding influence of

¹ Madison's Letter on the Tariff.

General Washington, who was then President, they were excited, especially in the neighbourhood of Pittsburgh, Pennsylvania, into open acts of violence. The inspectors were attacked in their houses, the mails robbed, the marshal resisted, and numerous other outrages, amounting to open insurrection, were committed.¹ At length, the President called out the militia, and by the display of superior force, and the determination to use it, quelled the insurgents. In this brief history, we see the *effect of excise duties*, of which the chief cause, next to the appetite for spirituous liquors, may be found in the *onerous* nature of a tax both upon labour and production.

§ 118. But all duties, imposts, and excises must be *uniform*. In the case of *Hylton vs. United States*,² the Supreme Court decided that a duty levied indiscriminately upon *all carriages* was not a *direct* tax, and was therefore properly laid, and *uniform*. Had it been a direct tax, it must, according to a previous provision of the Constitution, (§ 42), have been apportioned in proportion to the population of the several states.

§ 119. In the case of *Loughborough vs. Blake*,³ the court decided that the power of Congress to tax extended over the District of Columbia, and all other territories; that the power of taxation was co-extensive with the government, but that when exercised, direct taxes must be in proportion to the population. The court decided that Congress were not obliged to extend taxation to the territories, although when they did so, the Constitution gave a rule of assessment.

§ 120. 2d Clause. *To borrow money on the credit of the United States :*

This power has been constantly exercised, and for the plain reason that no state or government could

¹ 5 Marshall's Washington, 585.

² 3 Dallas, 171.

³ 5 Wheaton, 317.

subsist without it. Every war, especially under a frugal and economical government like ours, imposes upon the government the necessity for greater revenues than the ordinary taxes can supply; the consequence is a *national debt*. But the same simplicity and frugality which keep the revenue below the lavish demands of war, furnish the means of speedily *extinguishing the debts* which result from it. Thus, in our country, the year 1816 found the nation more than 120 millions in debt; the year 1834,—18 years afterward,—found it not only out of debt, but its statesmen actually contending about the *surplus revenue*!

§ 121. Clause 3d. *To regulate commerce with foreign nations and among the several states, and with the Indian tribes* :

§ 122. The power given in this paragraph has been the origin of many important legislative provisions, of which some have given rise to judicial decisions, and others to frequent and severe political discussions. In a very celebrated case, *Gibbons vs. Ogden*,¹ arising under the Steamboat Laws of New-York, the Supreme Court of the United States have solemnly decided the meaning of the phrase *to regulate commerce*.

§ 123. The term *commerce*, in that decision, is decided to comprehend *navigation*, and the power to *regulate* navigation is as expressly given as if it had been added to the word *commerce*.

§ 124. The power to *regulate commerce* extends to every species of commercial intercourse between the United States and foreign nations, and among the several states. But it does not comprehend that commerce which is *internal*, as between man and man, and between different parts of the same state. It does not, however, stop at the jurisdictional lines of the several states, but extends wherever the subject of it exists.

§ 125. The power to regulate commerce is the

power to *prescribe the rule* by which commerce is to be governed.

§ 126. The power to regulate commerce extends as well to *vessels* employed in carrying *passengers* as to those in transporting goods, to vessels navigated by fire and *steam* as to those by sails.

§ 127. The law regulating the *coasting trade*, in relation to which these decisions were made, was passed in February, 1793. From that day to this, Congress have been in the constant exercise of the power to regulate commerce. They have passed laws to regulate commerce, as such, to lay embargoes, navigation acts, &c.

§ 128. By the Embargo Act, December, 1807, a *prohibition* was laid of *exportation* from the United States, either by land or water, of any goods or wares, either foreign or domestic. In the case of the United States against the Brigantine William,¹ this act was controverted, as *unconstitutional*: but the court decided that the embargo act was *constitutional*; that non-intercourse and embargo laws are within the range of legislative discretion; and that the power of Congress was *sovereign* relative to commercial intercourse.

§ 129. Within a few years, another question has arisen under the power to regulate commerce. Political zeal and party spirit have originated an idea, which certainly, so far as authentic history goes, never entered into the heads of the framers of the Constitution. This notion is, that a law *imposing duties for the protection of domestic manufactures is not constitutional*. It is admitted, that any amount of imposts and duties may be levied upon *any articles* for the purposes of *revenue*, and that the protection arising from this impost, being *incidental*, is *constitutional*,—but that these same imposts being imposed for *protection so called*, are not constitutional. This is in reality a *distinction without a differ-*

¹ 2 Hall's Law Journal, 255.

ence; for, according to the theory itself, Congress, without transcending their powers, may levy the whole revenue from particular articles, and thus create not only a protection against, but an absolute prohibition of them. But, suppose the bill was enacted for protection merely, and let us examine briefly the principles and authorities applicable to it. It is neither necessary nor proper here to enter into a detailed argument upon the subject, but the matter may be stated in a few propositions with sufficient force to make the conclusion irresistible.

§ 130. The avowed *objects* of the Constitution, as expressed in the preamble, are to provide for the *common defence*, and *promote the general welfare*; for this purpose various means are provided, and among others the express power given "to lay imposts, duties, and excises, to provide for the common defence, and promote the general welfare." Now, it is perfectly apparent, that neither of these provisions can be carried into effect without such discriminating duties as will encourage and *protect* the domestic manufacture of the *munitions of war*, and of *necessary clothing*.

§ 131. The power to *regulate commerce* includes every thing in relation not only to the *mode of carrying it on*, but also to the *terms upon which* it shall be carried on.¹ *Those terms*, therefore, may be arranged either for the purpose of *raising revenue* or *protecting manufactures*, as suits the legislator. The government has a *discretion*, which it may exercise as it pleases.

§ 132. The meaning of the phrase, to *regulate trade*, must be gathered from the use of it among commercial people, and the manner in which it was understood by those who used it in making and adopting the Constitution.² In both these cases it was understood to include the encouragement of manufactures.

¹ Madison's Letter on the Tariff.

² Ibid.

§ 133. The Supreme Court is vested with power to decide on the *constitutionality* of all laws : this point has not been directly before them, but they may be considered as having decided it *upon principle*, by the application of certain rules which they have laid down.

§ 134. The court have decided¹ that the power to *regulate commerce* is the power to *prescribe the rule by which commerce shall be governed* ;

§ 135. That, like all other powers vested in Congress, *it is complete in itself*, and has no other limits than such as are prescribed in the Constitution ;

§ 136. That the power to regulate implies in its nature full power *over the thing to be regulated*.

§ 137. Now, if Congress have power to tax *all articles in all modes* (as they have, under the clause to *lay duties, imposts, &c.*), and have besides the power to regulate commerce without limitation as to the *subject matter*, then it is impossible to avoid the conclusion, that they have the power to make *any discrimination whatever*, in the *duties* to be levied, no matter for what *purpose*, whether of *revenue* or *protection*, is answered thereby.

§ 138. But if any thing were wanting to make conviction perfect, it would be found in the *uniform practice* of the government, whether administered by those who were co-laborators in its formation, or by those who grew up under it from the adoption of the Constitution to the present day ; in the opinions, often expressed, of the wisest and most distinguished statesmen ; and finally, in the admissions of the ablest opponents of the protective policy.

§ 139. The power to regulate commerce is *exclusive* in the general government.² The full power to regulate a particular subject implies the *whole power*, and leaves no *residuum*. A grant of a power to regulate

¹ Gibbons *vs.* Ogden, 9 Wheaton, 189.

² Brown *vs.* Maryland, 12 Wheaton, 419, 445.

necessarily excludes the action of all others, who would perform the same thing.

§ 140. The power to regulate trade and commerce extends to the *coasting trade* and *fisheries*, within or without a state, wherever it is connected with other states, or with foreign nations; it extends to the *regulation* and *government* of American *seamen* on board of American ships, and to conferring *privileges* upon *American ships* in domestic as well as foreign trade.¹

§ 141. It extends also to *quarantine*, *pilotage*, and *salvage* laws; to the construction of *light-houses*; to the *removal of obstructions* in creeks, harbours, and sounds; and to the establishment of *ports of entry* for the purposes of foreign commerce.

§ 142. These powers have all been exercised in the enactment and enforcement of various laws regulating the collection of the revenue, the government of seamen, the mode of navigation, and the improvement of harbours.

§ 143. This section of the Constitution contains also the power, which has been often exercised, of regulating intercourse with the Indian tribes. The Supreme Court have decided² that Congress have the exclusive right of *pre-emption* to all the *Indian lands* within the territories of the United States. This right the United States have constantly exercised; neither the states nor any individuals are allowed to purchase lands from the Indians.

§ 144. In the case of the Cherokee Nation *vs.* Georgia,³ it was decided that *a tribe*, situated within the territorial limits of a state, but exercising the powers of government and national sovereignty, under the guarantee of the general government, is *not a foreign state* in the sense of the Constitution; but is entitled to sue in

¹ 2 Story's Comm. 518.

² 8 Wheaton, 543; 6 Cranch, 142.

³ 5 Peters' R. 1, 16, 17.

the courts of the United States. Such a tribe is to be deemed politically a *state*, that is, a distinct political society, but is not a foreign state.¹ It is a domestic dependent nation, and is to be deemed in a state of *pupilage*. Its relation to the United States is that of a *ward* to a *guardian*.

§ 145. As it respects *foreign nations*, the Indian tribes within the limits of the United States are considered as completely within the control and protection of the United States; so that the interference of any foreign nation with those Indian tribes, or an attempt to seduce their good-will from the United States, would be considered as a cause of war.

§ 146. 4th Clause. *To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.*

§ 147. This provision vests the power of *naturalization* exclusively in the United States.² In pursuance of this power, Congress have passed a series of laws prescribing the *mode of naturalization*. Of the *classes* of persons who may come under these provisions there are *three*,—1st, Aliens of full age; 2d, Aliens, minors; 3d, Children of citizens born in foreign countries.

§ 148. 1st. The laws provide³ that any *alien of full age* shall be admitted to citizenship in the following manner. 1st. He shall *declare* on oath, or affirmation, before any *court of record*, having common law jurisdiction, a seal and a clerk, in any state or territory, or a circuit or district court of the United States, or before the clerks thereof, *two years* at least before his admission, that it was *bonâ fide* his intention to become a citizen of the United States, and renounce for ever all allegiance to any foreign prince or state of which he may at

¹ Worcester vs. Georgia, 6 Peters, 559.

² 2 Wheaton, 259, 269.

³ Act of April, 1802, as amended by the acts of 1804, 1813, 1816, 1824, and 1828.

the time be a citizen or subject. 2d, That he shall, at the time of his application to be admitted, declare on oath, before the aforesaid courts, that he will support the Constitution of the United States, and does absolutely renounce and abjure all allegiance to any foreign prince or state whatever; and particularly that prince or state whereof he was before a citizen or subject, which proceeding shall be recorded by the clerk of the court. 3d, That the court admitting such alien shall be satisfied that he has resided within the United States the *continued term of five years next preceding* his admission, without being during that time out of the United States, and one year at least within the state or territory where such court is held; and that, during that time, he has behaved as a man of good moral character, attached to the principles of the Constitution, and well disposed to the good of the same,—provided the oath of the applicant shall not be allowed to prove his residence. 4th, That if the alien applying to be admitted shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state whence he came, he shall, in addition to those requisites, expressly renounce his title or order of nobility, in the court to which his application shall be made, and it shall be recorded; provided, no alien who shall be a citizen or subject of any country at war with the United States at the time of his application, shall be admitted as a citizen of the United States.

§ 149. 2d. Free white minors,¹ who have resided in the United States *three years next preceding* their arrival at twenty-one years, and who shall have continued to reside therein till the time they may make application, may, after their arrival at twenty-one years of age, and after they shall have resided *in the country five years*, within the United States, including three years of their minority,

¹ Act of May, 1824.

be admitted without having made the declaration first required; provided they shall make such declaration at the time of their admission, and shall further declare on oath, and prove to the satisfaction of the court, that for three years next preceeding, it has been the *bonâ fide* intention of such alien to become a citizen of the United States, and shall otherwise comply with the laws relative to naturalization.

§ 150. The *children of naturalized persons*, or of those who have become citizens previous to the passage of any law upon the subject, and were under twenty-one at the time of their parents' admission to citizenship, shall, if dwelling in the United States, be considered citizens of the United States.

§ 151. 3d. The *children* of those who now are or have been *citizens of the United States* shall, though born out of the limits and jurisdiction of the United States, be considered as citizens; provided the children of those who have never resided within the United States shall not be so considered.

§ 152. And it is further provided,¹ that if an alien make the declaration in the first condition, and pursue the other requisitions as far as may be, and die before he is actually naturalized, the widow and children shall be considered as citizens, and entitled to all the rights of citizens, upon taking the oaths prescribed by law.

§ 153. An *alien* is, by the Common Law,² without power to hold real estate. Several of the western states, as Ohio, &c., have abrogated this part of the common law by statute, for the encouragement of emigration.

§ 154. The power to pass a general Bankrupt Law is, by this section, vested in Congress. This power was once exercised by Congress in April, 1800; but the law was repealed in 1803. Many efforts have been made

¹ Act of March, 1804.

² 2 Blackstone's Comm. 249, 293.

since to obtain from Congress a general Bankrupt Law, but, in consequence of a disagreement upon the details, none has been passed. The several states have frequently passed Insolvent Laws; but as another part of the Constitution, of which we shall speak hereafter, renders all acts *impairing the obligation of contracts* void, there has been much doubt as to the constitutionality and effect of these laws.

§ 155. The Supreme Court have now determined, by a series of decisions, the following points:¹

1st. That State Insolvent Laws cannot discharge the *obligation of antecedent contracts*;

2d. That the power of Congress to pass Bankrupt Laws is not an *exclusive* grant; it may, therefore, be exercised within constitutional limits by the states;

3d. That a state may pass valid laws discharging the *person* of the debtor and his after-acquired property from debts contracted *after* the passing such law;

4th. That such a discharge is valid only *between the citizens of the state* by which the law was passed;

5th. That the Insolvent Law of one state does not discharge the debtor from debts which he has incurred in another state.

§ 156. 5th Clause. *To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.*

§ 157. The power conferred by this paragraph has been long and efficiently exercised, so that the American coinage has supplied much of the currency of the country, and holds a high rank among foreign nations. The *Mint* of the United States is an office, with the proper officers, created by Congress in 1792,² and has been in operation ever since. Every person may bring gold and silver to the mint to be coined, and if it

¹ 4 Wheaton's R. 123; 12 Wheaton's R. 273.

² Act of

April, 1792.

is of the standard value, is assayed and coined free of expense; but if below the standard, enough is retained to pay the expense of coinage. The coinage of the United States is entirely *decimal*, and, therefore, in practice, more convenient than that of any other nation. Thus, the Spanish milled *dollar* is taken as the *unit*, and all smaller coin is in *tenth* parts of that, and all gold coin in *tens* above; as the *dime* is the *tenth* part of a dollar, and the *eagle* ten dollars.

§ 158. 6th Clause. *To provide for the punishment of counterfeiting the securities and current coin of the United States ;*

Congress have exercised this power by making the crime of counterfeiting a felony, punishable by imprisonment, fine, &c. This power is consequential to the preceding,—that of coining money and regulating its value.

§ 159. 7th Clause. *To establish Post-offices and Post-roads ;*

The establishment of Post-offices and Post-roads has existed since, and before, the organization of the present government. Being a branch of public administration co-existent with commerce, social intercourse, and the diffusion of knowledge, it has grown with the increase of the general prosperity, and has become, from small beginnings, an immense and complicated machinery. In 1830, the number of Post-offices was 9000, and the number of miles in Post-roads more than 120,000 ; and this number is constantly increasing.

§ 160. *To establish Post-roads and Post-offices,* means simply to make any given road a *post-route*, and appoint in any given place a *postmaster*. The *routes* are *established* by act of Congress, but it is the duty of the postmaster-general to appoint postmasters at all such places as he may judge best, and expedite the mail as

¹ Act of April, 1806.

frequently, on established routes, as the public interest may require.

§ 161. The power to establish Post-offices and Post-roads being given, the *consequential* powers necessary to carry it into execution are likewise given; as, for example, the power to secure the *safety and speedy transportation* of the mail.¹ Congress have accordingly made the *robbery* of the mail a *felony*, and prohibited, under high penalties, the *obstruction* of the mail. Under this act the Supreme Court² have decided, that even a stolen horse, found in the mail stage, could not be seized, and that the driver could not be arrested on *civil process* in such a way as to obstruct the mail. But it was subsequently decided, that this was not to be carried so far as to endanger the *public peace* by interfering with *criminal process*.³ Thus, a felon may be arrested in the mail stage, or the driver, if he had committed murder.

§ 162. Under the power to establish *Post-roads* has arisen the question of *Internal Improvements*. Though much agitated, it is not settled, and I shall give here merely the different authorities upon the subject, whether Legislative, Executive, or Judicial.

§ 163. 1st. Of the *Legislative opinions* upon the subject. By the Act of March 3d, 1803, Congress concluded a compact with the state of Ohio, by which *three per cent.* of all the moneys derived from the sale of *public lands* within the state of Ohio were reserved for the construction of roads within that state. The consideration was, that the lands of the United States in that state should not be taxed. Whether by inadvertence or intention, this act clearly acknowledged the power of the general government to make *Internal Improvements*; for the appropriation was made by the

¹ Act of April, 1810.

² 3 Hall's Law Journal.

³ 1 Peters' Rep. 390.

United States, and the funds were derived from the property of the United States. It could be no objection to this reasoning that the work was to be done by the state; for it is an established principle, that "he who acts by another, acts by himself." Neither is it an argument to say there was a consideration; for, "what one cannot do directly he cannot do indirectly." This was so understood by Congress, for in several subsequent acts they authorized the construction of roads within the North-west Territory.

§ 164. The next step taken by Congress¹ was the construction of the *Cumberland Road*. This road was commenced in 1806, and in a few years finished from Cumberland, on the Potomac, to Wheeling, on the Ohio. In 1820, Congress resumed the construction from Wheeling westward, and it is now in progress through the western states. This work was undertaken on the ground of the compact with Ohio. By the terms of a compact made between that state and the United States, *five per cent.* of all the moneys arising from the sale of public lands within that state were to be applied to the making of roads "leading from the navigable waters of the Atlantic to the Ohio." This, however, falls within the same principles already stated, in reference to the *three per cent. fund*; and as the sum drawn from the *reserved funds* was soon greatly exceeded, the work has since been conducted simply on the ground of *internal improvement*.

§ 165. The next act² was the opening of the road from Athens, in Georgia, to New-Orleans, and from Nashville to Natchez. In 1809, the Canal of Carondelet³ was extended to the Mississippi by the general government.

§ 166. In 1811, Congress directed⁴ the survey and

¹ Act of March, 1806: ² Act of April, 1806.
³ Act of February, 1809. ⁴ Act of December, 1811.

³ Act

making of two roads,—one from the Rapids of the Maumee to the Western Reserve, and another from Sandusky to the Greenville Line.

§ 167. By several successive acts in 1812, 1816, 1817, and 1818, Congress confirmed their former decisions, by making surveys of, and authorizing the construction of roads; till it would seem that, *practically*, there was no doubt in the National Legislature upon the subject. The matter has, however, been several times tested by the interposition of the Executive Veto.

§ 168. A bill to set apart a portion of the bank bonus and dividends for the purpose of Internal Improvement was passed in 1817, and returned by *Mr. Madison*, who denied the power of Congress to construct roads and canals, or improve water-courses. The House of Representatives, however, re-affirmed their power by a vote of sixty to fifty-six.

§ 169. At the succeeding session, Mr. Monroe, in his message, also denied the constitutional power of Congress to make *internal improvements*. The House soon after passed a resolution, ninety to seventy-five, declaring that Congress, under the Constitution, *had power* to construct roads and improve water-courses.

§ 170. From this period Internal Improvement seemed the settled policy of the government for several years. In 1822, Mr. Monroe, indeed, interposed his veto on the bill providing for the Collection of Tolls on the Cumberland road; but, the objection was not to the *power of making* roads, but to the *Collection of Tolls* upon it, as being inconsistent with the jurisdiction and sovereignty of the soil. This, however, was not deemed an impediment to the construction of public works, for Congress immediately took measures to organize a system of surveys and reports, in relation to such roads and canals as the public interest might require; and in April, 1824, what is called the Survey Bill became a law. It appropriated \$30,000 for the purpose of making sur-

veys of different parts of the country, and authorized the employment of the Engineer Corps in that service. Soon after the passage of this bill, the accession of a new administration, decidedly favourable to Internal Improvement, gave the system a new impulse, and from that time forward Congress enacted many laws affirming and enlarging these powers. They subscribed a large amount of stock to the Ohio and Chesapeake Canal, to the Dismal Swamp Canal, and the Louisville and Portland Canal. They made appropriations for the improvement of numerous harbours, rivers, &c. &c.,—for the making of Military Roads,—for the continuance of the Cumberland Road, and various other public works. A practical check was given to this system by President Jackson, in his Veto on the Maysville Road Bill, of which I shall speak hereafter. Congress, however, remained unchanged. By the passage of the Harbour Bills, and numerous other items for roads and improvements in other bills, they have manifested a fixed opinion in favour of their power to construct roads and other public works.

§ 171. The result deduced from this Legislative History is, that *Congress have uniformly asserted their power, under the Constitution, to construct and hold, with the public funds, public works, under the denomination of Internal Improvements.* We shall now examine the opinion of another branch of the government.

§ 172. 2d. Of the Executive opinions. During the administration of Washington and the elder Adams, the power of Congress in respect to Internal Improvements was neither exercised nor much examined, and therefore no executive opinions were formally advanced. Under the administration of Mr. Jefferson, we have already seen the compact was made with Ohio, and the Cumberland Road undertaken. To both these acts Mr. Jefferson gave his assent, and it is difficult to see in what respect the works differ from other public improve-

ments; yet, by his message of December 2d, 1806, he denied the power of Congress to make roads and improve water-courses, though he earnestly recommended the grant of such powers by the states. The reason given was, that this power was not enumerated among the powers of Congress. The authority of *Mr. Jefferson*, therefore, may be considered as decidedly *against* the power to make internal improvements, though he was most earnestly in favour of granting such a power to the government.

§ 173. *Mr. Madison*, in 1796, spoke in favour of a resolution relative to a survey of a road from Maine to Georgia; yet, in 1815, in his Message to Congress, while strongly recommending to Congress "the great importance of establishing throughout our country the roads and canals which can best be executed under national authority," intimated that any *defect in the constitutional power* might be supplied in the mode provided by the Constitution.

In 1817, *Mr. Madison* placed his *Veto* upon the bill providing means for the *construction of roads and canals*, and the improvement of *water-courses*. He denied the constitutional power of Congress to make such works, and thus gave his judgment also in the *negative*.

§ 174. In *Mr. Monroe's* first message to Congress,¹ he declared his agreement with his predecessors, and doubt of the constitutionality of such works. After the passage of the Resolution of Congress, in 1818, affirming the power, he is understood to have withdrawn his opposition, and during his administration, appropriations for such purposes greatly increased. In 1822, however, he placed his *Veto*² upon the act for the erection of Toll-gates and the collection of Tolls on the Cumberland Road. This he considered as requiring the juris-

¹ December, 1817.

² May, 1822.

diction and sovereignty of the soil, which the general government did not possess.

§ 175. Mr. John Quincy Adams strongly recommended and encouraged Internal Improvements. During his administration, the system seemed to have become a part of the permanent policy of the country. Numerous surveys were completed, and large sums appropriated for various public works.

§ 176. General Jackson, while a member of the Senate, is understood to have had no constitutional scruples upon the subject; but, by his Veto upon the well-known Maysville Road Bill,¹ he gave his influence in the *negative*. In whatever manner this document may be judged of, during the heat of temporary party controversies, there can be no doubt that it contains a temperate and judicious review of the question, and a correct decision upon the particular point submitted to him. That point was, the propriety of constructing by the general government a *local road entirely within one state*. There is no doubt that if the power of making Internal Improvements exist in the general government, it must be confined to *national, not local* objects. General Jackson, however, went further than this, and deemed that all the power which had been uninterruptedly exercised upon this subject, viz. that of *appropriating money, was insufficient and unsafe for the successful prosecution* of national works. He regarded it, notwithstanding the usage was admitted, as improper to exercise powers not granted, and which might easily be conferred.

§ 177. Since this message, the Executive influence has been altogether opposed to Internal Improvements, and they have made little progress.

§ 178. We have now seen that the opinions of Presidents Jefferson, Madison, Monroe, and Jackson

¹ Message 27th May, 1830.

were opposed upon *constitutional grounds* to the exercise of such a power by the general government; but that all of them, except the latter, were in favour of the measures themselves, and under all their administrations, except also the last, many national works were undertaken. President Adams alone conceded both the *theory and practice*.

The conclusion of the whole then is, that *the weight of Legislative authority has been uniformly in favour of the power, while that of Executive authority has been against it*.

§ 179. 3d. Of Judicial opinions we have none except general decisions upon the *indirect powers of Congress*.

The Supreme Court decided, that a contemporary exposition of the Constitution practised, and acquiesced in for a number of years, fixes the construction of the Constitution, and *the court will not shake or alter it*.¹ Also, that there is nothing in the Constitution of the United States which excludes incidental or implied powers.²

The two principles here cited might be considered as showing an inclination in the Supreme Court to sustain the power claimed by Congress. Yet, as it may be long before the question will come before that tribunal, it may be considered as open to discussion.

§ 180. Clause 8th. *To promote the progress of science and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries* :

§ 181. In England it was solemnly decided,³ that an author had, by Common Law as well as by Statute, an exclusive right to his own works. In this country, *Copy-rights* and *Patent-rights* are derived from *Acts of Congress*, founded on this provision of the Constitution.

¹ 1 Cranch, 299.
Rep. 2303.

² 4 Wheaton, 316.

³ 4 Burrows'

§ 182. The acts¹ relative to Patents direct that "Patents may be obtained for any new and useful art, machine, manufacture, or composition of matter not known before the application." The term for which a Patent may be obtained is *fourteen years*. Such a law would seem to be an effectual protection to inventors against an infringement of their rights, yet we may see in the Life of Whitney² of how little avail it is against the pressing interests of society. In Georgia, no jury could be found to give him a verdict of damages for the open violation of his Patent for the Cotton Gin,—an invention which had doubled the value of cotton!

§ 183. *Copy-rights* were formerly secured for *fourteen years*; now, by the Act of February, 1831, in every respect better than the former, the term is prolonged to *twenty-eight years*, and at the expiration of that time, he (or, if he be dead), his wife or children, may renew it for fourteen years longer.

§ 184. Clause 9th. *To constitute tribunals inferior to the Supreme Court: To define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations:*

§ 185. In another place we shall consider what relates to the Supreme and Inferior Courts.

By the Law of Nations, and by the Common Law, *Piracy* is defined to be—*robbery on the high sea*, that is, the same crime which, when committed on the land, is denominated *robbery*.³

§ 186. *Felony*, at Common Law, comprises every species of crime which occasions the forfeiture of lands and goods. These, under the English Law, were most crimes punishable with death, such as murder, forgery, theft, &c. But this does not include all offences on the high seas; for example, Lord Coke says that *piracy* is

¹ Acts of February, 1793, and April, 1800.
man's Journal.

³ Blackst. Comm. 71, 72.

² See Silli

not felony, because punishable by the *civil* and not the common law.

§ 187. The *High Seas* means *all the waters of the ocean*, whether within the territorial boundaries of a foreign nation or of a domestic state.¹

Between high-water mark and low-water mark, where the tide ebbs and flows, the Common Law and the Admiralty hold alternate jurisdiction; one upon the water when it is full sea, the other upon the land when it is ebb.

The high seas, here defined, however, do not extend to creeks and inlets, but, as it respects the states, means that part of the ocean which washes the sea-coast, and is not included within any county.

§ 188. Congress, by various enactments, have exercised the powers vested in them by this section, and have affixed various punishments to the crimes of treason, murder, robbery, piracy, &c.

§ 189. Congress has power to provide for the punishment of offences committed by persons serving on board a ship of war of the United States, wherever that ship may be: but Congress has not exercised that power in the case of a ship lying in the waters of the United States.²

§ 190. Clause 10th. *To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:*

§ 191. These powers are attributes of *sovereignty*; they are vested in the *national* government, and not in the *states*. The power of declaring war is the highest which the government possesses, and involves directly the happiness and existence of the people: as it is called the *last resort of kings*, so it is certainly the last *appeal of nations*.

¹ 5 Wheaton's Rep. 184, 200, 204.

² 3 Wheaton, 336.

§ 192. To grant letters of marque and reprisal is but a part of the power to declare war ; for such an act would unquestionably produce war.

§ 193. The power of "making rules concerning captures on land and water," which is superadded in the Constitution to that of declaring war, is not confined to captures which are *extra-territorial*, but extends to rules respecting enemies' property found within the territory, and is an express grant to Congress of the power of confiscating enemies' property found within the territory at the declaration of war, as an independent power, not included in that of declaring war.¹

§ 194. Clause 11th. *To raise and support armies ; but no appropriation of money to that purpose shall be for a longer term than two years :*

§ 195. The United States have always had a small standing army, to keep up the forts on the sea-board and awe the Indians. The provision preventing an appropriation for a longer period than *two years* was for the obvious purpose of keeping the standing army always within the immediate control of the people.

§ 196. Clause 12th. *To provide and maintain a navy :*

This, like the provision to maintain an army, is a consequence of the general power to declare war, and is absolutely necessary to national existence. The United States have long had a respectable navy, and all the provisions necessary to its organization, support, and increase have been provided for by law.

§ 197. Clause 13th. *To make rules for the government and regulation of the land and naval forces :*

Congress have established, by law, rules and articles of war for the government of the army,² and rules and regulations for the government of the navy.³ These

¹ 8 Cranch, 110.

² Act of April, 1806.

³ Act of April, 1800.

rules provide for the discipline of the service, the mode of trial, and the punishment for offences. The rules and articles of war must be read at the head of each corps every six months, and are to govern as well the militia in service as the regulars, but the militia are to be tried by their own officers.

§ 198. Whatever crimes are committed on board of public ships of war of the United States, whether in port or at sea, are exclusively cognizable and punishable by the government of the United States.¹ The public ships of sovereigns, wherever they may be, are deemed to be extra-territorial, and enjoy the immunities from the local jurisdiction belonging to their sovereign.²

§ 199. Clause 14th. *To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions :*

Clause 15th. *To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress :*

§ 200. Upon these two provisions, and a subsequent one, that the President shall be commander-in-chief of the militia when called into actual service, rest the whole power of the national government over the militia. Upon two occasions only has the power to "call forth the militia to execute the laws, suppress insurrections, and repel invasions," been exercised,—one the insurrection in Pennsylvania in 1794, the other to repel the invasion of the enemy during the war of 1812. Some serious questions have arisen under this power. In consequence of a requisition made by President Madison on the governors of Massachusetts and Connecticut for their quotas of militia, a question arose between the general

¹ United States vs. Bevens, 3 Wheaton, 336.

² Idem.

and state governments in relation to this power. In that and following discussions, these questions were made:

1. *Who* is to determine *when* the exigency pointed out by the Constitution *has happened*?

2. Whether the President can place the militia under the command of any one but himself?

3. Whether he can detach *parts* of the militia corps?

§ 201. On the first question, the governors of Connecticut, Massachusetts, and Rhode Island, with the Supreme Court of Massachusetts, held¹ that the *governors of the states* were to judge *when* the exigency contemplated by the Constitution had happened. This doctrine, however, was denied by President Madison in his Message to Congress, and the question has since been solemnly settled² by the Supreme Court of the United States. It was then settled that the authority to decide belongs exclusively to the President. The act of 1795, providing for the mode of calling out the militia, was framed on this principle. The law contemplates that, in certain exigencies, orders shall be given to carry the powers into effect, and no person can have a right to disobey them. No provision is made for an appeal from, or review of, the President's opinion. And whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, the general rule of construction is, that he is thereby constituted the sole and exclusive judge of the existence of those facts.³

§ 202. The power to *govern* the militia, when in the service of the United States, is an *exclusive one*; for any such power concurrent in other authorities would destroy all unity of action and command.

§ 203. There is nothing in the Constitution to pro-

¹ Martin vs. Mott; 12 Wheaton's Rep. 30, 31.
Com. 245, 246.

² 12 Wheaton, 19, 31, 32.

³ 1 Kent's

hibit a state from calling forth its own militia to assist the United States, when that militia is not in the service of the United States, to suppress insurrections and repel invasions. Such a concurrent exercise of power does not interfere with, or obstruct the exercise of, the powers of the Union.

§ 204. Upon the questions whether the President can *delegate his authority*, or detach *parts* of the militia corps, different opinions have been advanced by the state and national authorities. Thus Connecticut and Massachusetts, during the war, asserted that he could not; President Madison, that he could. The latter seems the general opinion, and is certainly most consonant to reason.

§ 205. By the act of May, 1792, Congress provided for the organization, arming, and disciplining of the militia. By that act, directions were given as to the mode in which the President was to give his orders; and refusal or neglect to obey them was declared a public offence, and the mode of trial, by court-martial, was pointed out. In relation to this act, the Supreme Court have decided,¹ that the militia, when called into actual service, were not to be considered in *that service*, or as *national militia*, till they were mustered at the *place of rendezvous*; and that *until then*, the state retained a right, concurrent with the government of the United States, to punish their delinquency. If the militia, when called into the service of the United States, refuse to obey the order, they remain within the military control of the *state*, and it is competent for the state to provide for trying and punishing them by a state court-martial.

§ 206. In addition to the act of 1792, Congress have passed several other acts upon this subject. In February, 1795, a law was passed calling forth the militia, in contemplation of the well-known Whiskey Insurrection. In

¹ *Hurten vs. Moore*; 5 Wheat. Rep. 1.

May, 1820, they passed an act providing that the system of *discipline* observed by the *militia* throughout the United States should be the same as observed by the *regular army*.

§ 207. A *court-martial* that imposes a fine upon a man *not liable* to militia duty are *trespassers*, as well as the officer who distrains for such fine.¹

§ 208. Clause 16. *To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places, purchased by consent of the Legislature of the state, in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; And*

Clause 17. *To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.*

§ 209. In pursuance of the power to exercise exclusive jurisdiction, &c. &c., Congress, in July, 1790, accepted of a grant from Virginia and Maryland, of *ten miles square*, on the Potomac, for the seat of government, which is the present District of Columbia. Over this territory Congress have exclusive jurisdiction, and exercise all legislative powers.

§ 210. The jurisdiction over various other sites, as West Point, &c., has been granted by the Legislatures of the respective states in which they lie, for military and naval purposes.

§ 211. The power to exercise exclusive jurisdiction includes the power to tax.²

§ 212. Congress have the power of *general* as well

¹ 3 Cranch, 331.

² 5 Wheaton's Rep. 317.

as *local* jurisdiction, in reference to acts committed within that jurisdiction.¹

§ 213. The states cannot take cognizance of any acts done in the ceded place after the cession; and, on the other hand, the inhabitants of those places cease to be inhabitants of the states, and can no longer exercise any political rights under the laws of the state.²

But there is commonly reserved by the states a right of executing criminal process within the limits of ceded places, and this may be exercised in perfect consistency with the right of jurisdiction on the part of the United States.

§ 214. The clause giving Congress power to make all laws which shall be *necessary and proper to carry the foregoing into execution*, has given rise to more diversity of sentiment, discussion, and controversy than any other in the Constitution. The reason is obvious; about the direct provisions of that instrument men of ordinary comprehension could have but little difference of opinion; but as to what is *necessary and proper*, different men might form very different judgments: so it happened; the Constitution had scarcely gone into operation under the administration of Washington, when a radical difference of opinion arose, in relation to the charter of the United States Bank.

§ 215. In 1791, the Secretary of the Treasury recommended the establishment of a National Bank, as necessary to the proper administration of the financial concerns of the nation. A bill for that purpose was introduced into the House of Representatives, and warmly opposed on constitutional grounds. Mr. Giles, Mr. Madison, and Mr. Jackson were among the opponents of the measure, and Mr. Ames, Mr. Boudinot, and Mr. Gerry among its advocates. The former denied its consti-

¹ 2 Kent's Comm. 403; 6 Wheaton, 426.
Comm. 103; 8 Mapach. 72.

² 3 Story's

tutionality, on the ground that Congress could not exercise any powers not expressly granted,—that no power was anywhere given to charter a bank,—and that, if such implied powers were exercised, there would be *no limits* to the powers of the general government.¹ Their opponents contended that Congress had power to pass all laws *necessary and proper to effect the ends* proposed by the Constitution,—that, in a confused state of the general currency, such a bank was *necessary* to the power of *levying and collecting taxes*,—and that it was implied in the *power to borrow money*, which also includes the power to *lend*, and that *without* the exercise of *implied powers*, the government could do nothing. After much debate, the bill passed² both Houses of Congress. The President (Washington), on receiving the bill, called a cabinet council, in which it was again debated. The Secretary of State (Mr. Jefferson) and the Attorney-general denied its constitutionality, while the Secretaries of the Treasury and War (Hamilton and Knox) agreed with the majorities in Congress. The President, after deliberation, gave it his signature, and the weight of his favourable judgment.

§ 216. In 1811, the charter of the United States Bank expired, and it was *not rechartered*. In the debate upon the question of its constitutionality, it was advocated by Mr. Crawford, and opposed by Messrs. Clay and P. B. Porter, upon the same grounds as it had formerly been advocated and opposed by Messrs. Ames and Madison.³

§ 217. In 1816, a new bank was chartered, with a much larger capital. The currency of the country was then in a very depreciated and bankrupt condition. The effect of the establishment of the bank was to restore a

¹ Elliott's Debates, vol. 4.

² Kent's Comm. vol. 1, p. 234.

³ 4 Elliott's Debates, 268, 269.

healthy action to the money market, and resuscitate credit.

§ 218. In 1832, in anticipation of the expiration of the charter in 1836, an application was made for its renewal, and the bill passed both Houses of Congress, but was rejected by the interposition of the Executive Veto, by President Jackson.¹

§ 219. The action of the Supreme Court upon the subject has been direct and distinct. In the case of *McCullough vs. State of Maryland*,² that tribunal decided,—

1st, That Congress has power to incorporate a Bank.

2d, That there is nothing in the Constitution which excludes incidental or implied powers; and that if the *end* be within the *scope* of the *Constitution*, all the *means* which are appropriate, and are *adapted* to the *end*, and not prohibited, may be constitutionally employed to carry it into effect.

3d, That the Bank of the United States has a constitutional *right* to establish *offices* of discount and deposit *within the states*.

4th, That the states *cannot tax* the branches: they have no right to tax any of the constitutional *means* used by the government to effect constitutional ends.

5th, That the last rule does not extend to any of the *real property* held by the bank in particular states, nor to the *proprietary interests* of any citizen of that state in the bank.

§ 220. In the case of *Osborne vs. Bank of the United States*,³ the court decided, 6th, That the bank may *sue in the Federal Courts*.

§ 221. These several decisions gave validity to the charter, and the acts of the United States Bank, so

¹ Journals of Congress, 1832.

² 4 Wheaton's Rep. 316.

³ 9 Wheaton, 733.

far as its constitutionality could be established by judicial authority, it was so. The authorities upon this subject stand thus:—*Congress* passed acts in its favour in 1791, 1816, and 1832. On the other hand, in 1811, they rejected a bill for its recharter. Of the *Executive*, Presidents Washington, Adams, Madison, and J. Q. Adams approved of it; President Jackson alone disapproved. The *supreme judicial* tribunal of the Union has given a solemn decision in its favour. The *constitutionality* of a National Bank is therefore settled, as far as it can be, by *decision, precedent, and authority*. The *expediency* of such an institution may at any time be questioned by the representatives of the people, and so, as a matter of *argument or theory*, may its constitutionality, simply because all things are open to discussion at the *ultimate tribunal* of *public opinion*; but the *existence* of the bank being once supposed, *nothing* can shake its *validity* while the decisions of the Supreme Court remain unimpaired and the Constitution unviolated.

§ 222. Another *incidental power* claimed and exercised by the government is to create a *priority of payment* in their favour, in case of the death or insolvency of the debtor. Congress, by their acts of 1789, 1790, 1792, 1797, and 1799, gave this priority of payment over private creditors, in cases of insolvency, and the distribution of the estates of deceased debtors.¹ In the case of *Fisher vs. Blight*,² the power thus vested in the government by act of Congress was declared to be constitutional, and coming within the legitimate scope of *means* adapted to an *end* which is constitutional. The government must pay the debts of the Union, and therefore is vested with the *most eligible* means of doing it.

§ 223. The principle is, that the government of the

¹ 1 Kent's Comm. 230.

² 2 Cranch, 356.

United States are *preferred creditors* to citizens, or even to states; but no lien is created by this preference; a prior bona fide conveyance is *valid*. The same principle came up and received a further exposition in several other cases.¹

§ 224. The *limits* of this priority is thus defined:

1. It exists in the case of the death of the debtor without sufficient assets.

2. In the case of bankruptcy, or legal insolvency, manifested by some act pursuant to law.

3. In case of the *voluntary assignment*, by the insolvent, of all his property to pay his debts.

4. In case of an *absent*, concealed, or absconding debtor, whose effects are attached by process of law. This prerogative of the United States must be strictly construed, for it is in derogation of the rights of creditors.

§ 225. The United States have likewise, by *implication*,² the right of suing in their own courts; and suits may be brought in the name of the United States, or of any artificial person, as the Postmaster-general, for their benefit.³

§ 226. Another exercise of implied power by the government is found in the acquisition of Louisiana and Florida by treaty. No provision is made in the Constitution for acquiring foreign territory; and even in the opinion of President Jefferson, there was no constitutional power to make the treaty for the acquisition of Louisiana. The President and Congress, however, approved the act, and the nation acquiesced.⁴ This power is, however, an incident of sovereignty.

§ 227. Another exercise of *implied* authority was the passage of the celebrated Alien and Sedition Laws.⁵ The first gave the President the power to order out of the country such aliens as he should deem dangerous to

¹ 3 Cranch, 73; 5 Id. 289; 8 Cranch, 431; 2 Wheaton, 396.

² 1 Kent's Comm. 233. ³ 3 Story's Comm. 155. ⁴ 3 Story's

Comm. 162; 4 Elliott's Debates, 255. ⁵ Alien and Sedition

Acts, 1798.

the peace and safety of the country ; and the second made it a public crime for persons to combine and conspire together, with intent to oppose any of the measures of the United States, or to write, print, or publish, or to disseminate any false, scandalous, and malicious writings against the government of the United States, Congress, or the President. These acts soon expired by their own limitations, and never received a judicial sanction. They excited general odium, and have not been revived.

SECTION IX.

§ 228. 1st Clause. *The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight ; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.*

§ 229. The persons here spoken of were *slaves*, and the effect of this clause was to permit the slave-trade till 1808. After that time arrived, Congress prohibited it in every direction, and affixed to it the *penalties of piracy*.

§ 230. *The privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.*

§ 231. The term *Habeas Corpus* is a Latin phrase, signifying "You may have the body." The Writ of Habeas Corpus is a judicial writ, *grantable by any Court of Record or judge thereof*, and commands the sheriff, or other officer named in it, to have the body, and *bring it before said judge, or court*. The object of the writ is, by bringing a person, confined *by any means whatever*, before a competent authority, to have his confinement, and the cause of it, investigated ; and if it be not strictly legal, to discharge him.¹ The writ is grant-

¹ 1 Blackstone's Comm.

able upon the application of *any person whosoever*, upon behalf of the prisoner, and is the only mode by which a person illegally detained may at once obtain his liberty. The privilege of the writ of Habeas Corpus is, therefore, an invaluable privilege, and is a part of the essence of liberty inserted in the Constitution, where it can neither be mistaken, nor evaded.

§ 232. Our writ of *Habeas Corpus* is derived from the English Statute of the 31st Charles II. which was passed in consequence of frequent invasions of the personal rights and liberties of the citizen during the reign of Charles I.

§ 233. The writ may be suspended in case of *rebellion or invasion*; yet no suspension has ever yet taken place. An attempt to suspend it was made during the administration of Mr. Jefferson, on the occasion of Burr's conspiracy, but it failed in the House of Representatives by a large majority.¹

§ 234. 3d Clause. *No Bill of Attainder, or Ex Post Facto law shall be passed.*

The terms Bill of Attainder and Ex Post Facto have already been defined.² The very definition of these explains the meaning of the clause in the Constitution. The former, by which judgment should be passed and punishment inflicted upon the citizen without trial, and the latter which makes an act criminal which was not criminal when committed, were obviously inconsistent with any thing like justice to, or liberty in, the citizen. They were, therefore, expressly prohibited.

§ 235. 4th Clause. *No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.*

This clause is nearly the same with a part of the third clause of the 2d Section, 1st Article. The only

¹ 1 Senate Journal, 1807; Journal of House of Representatives, 1807. ² Definitions, 28 and 29.

difference is the insertion of the word *capitation*,—but this, by the following words, *or other direct tax*, is evidently included under the head of *direct taxes*. The meaning of both clauses then is, that *direct taxes*, as well as representation, should be in proportion to the *census* in each state,—as directed to be taken in the 2d Section.

§ 236. 5th Clause. *No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another.*

These prohibitions explain themselves so clearly, as to require little exposition by commentary or authority. The first clause, preventing duties upon exported articles, is rendered necessary by the fact, that without it, the agriculture and commerce of some states might, at any time, be destroyed by such duties. Some states, as South Carolina and Alabama, derive their whole wealth from the exportation of particular articles, and others again, as Virginia, and North-Carolina, and Maine, a great part of it: so that by means of such duties the government might at any time make the most odious distinctions among the states; nor would it derive any advantage to itself, for duties upon *exports* can at no time be advantageous, for the obvious reason that it is by such means only a nation is enabled to procure either the money or produce of other nations.

It is also forbidden to give any preference to the ports of one state over those of another, or to oblige vessels bound from one state to enter, clear, or pay duties in another. The reason of this is yet more clear than that of the other. If the reverse of this were true, and such preference was allowed, and such duties imposed on vessels, it is plain the states would be in the relation of foreign states to each other. There would be no

reciprocity of interests between them, and the unity of the government would be destroyed.

§ 237. 6th Clause. *No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipt and expenditures of all public money shall be published from time to time.*

The object of this provision was,

1st, To place the *public moneys* beyond the reach of the *executive*: however limited the powers of the executive in other respects, it is obvious that if he has *control of the purse*, he would be *unlimited* in the most essential attribute of power. It is, therefore, wisely provided, that the people, who alone bear the burthens of taxation, should, through their representatives, alone have the power of appropriating the *resulting revenue*. The administrations of General Washington and Mr. Jefferson were minutely strict in the observance of this injunction of the Constitution; but many instances might be cited since their time, in which money had been applied to objects different from those to which it had been specifically appropriated.

§ 238. 2d, The other part of this clause, requiring a strict account of receipts and expenditures, was made to ensure fidelity and accuracy in the disbursement of public moneys. In the treasury department, as will be seen hereafter, various checks and balances, in respect to the transfer of money from the treasury, have been devised.

§ 239. 7th Clause. *No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of Congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state.*

§ 240. The first clause, in reference to titles of nobility, is the constitutional barrier against those odious

personal distinctions which arise from, and originate aristocracies in other countries.

The second clause, in reference to offices and titles from foreign powers, is made as a check against the corruption of the officers and citizens of this government by the princes and ministers of foreign states.

SECTION X.

§ 241. Clause 1st. *No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.*

§ 242. The power to enter into any treaty, alliance, or confederation, is one of the most important attributes of *national sovereignty*: when the states parted with it, they parted with one of those characteristics which made them *independent* as it respects each other. This should be borne in mind, as it will be seen in the end that they parted with them all, and thus divested themselves of all that *national sovereignty*, which in modern times is the sole foundation of the strange and fanciful theories put forth under the name of *state rights*.

This right to make separate treaties and alliances was yielded up by the *old articles of confederation*; for it was perfectly plain and palpable that the states could not retain it and form one *united nation*: the latter was their object, and they yielded the former.

§ 243. Letters of Marque and Reprisal are a commission from the *sovereign authority* to a citizen or subject to make *reprisals* on the vessels or property of foreign nations who have injured the one granting them.¹

¹ Vattel, book 2d, chap. 18th, section 346.

The right of issuing these is *prohibited* to the several states. It lies in the government of the Union. The reason of this also is obvious. Letters of Marque¹ are merely introductions to war; and if one state had the right to issue them independent of the rest, all the others might immediately be involved in war by the instrumentality of that one. It will be remarked, that this right again is, by the definition, an attribute of *national sovereignty*, and is therefore taken from the states and vested in the government of the nation.

§ 244. The right of *coining* money is also a right² of *sovereignty*, and is vested in the general government. If the right of *coinage* was vested in the several states, then there would be no uniformity in the *standard of value*, and spurious coin might be circulated.

§ 245. The next prohibition is that against issuing "Bills of Credit." What is a Bill of Credit? A Bill of Credit³ is defined to be *paper intended to circulate through the community for its ordinary purposes, as money, which paper is redeemable at a future day.*

§ 246. Is it necessary to constitute a Bill of Credit, that it should be made a legal tender? In the case of *Craig vs. the state of Missouri*,⁴ the Supreme Court decided that it was *not necessary* that they should be made a legal tender in order to constitute them a Bill of Credit. In that case the state of Missouri made loans on certain *certificates*, issued by the Auditor and Treasurer of the state, of various denominations, and which were made receivable at the treasury in payment of taxes and debts, and by public officers in payment of their salaries. They bore interest, and were redeemable by the state. Such *certificates* were de-

¹ 3 Story's Comm. 219. ² Vattel, book 1, chap. 10th, sect. 106, 107. ³ 3 Story's Comm. 227. ⁴ 4 Peters' Supreme Court Reports, 410.

eided by the court to be Bills of Credit, and as such unconstitutional.

§ 247. The object of the prohibition was to prevent the flood of depreciated currency which had so embarrassed the states during and subsequent to the revolutionary war. It is plain that without this and the accompanying clauses in relation to coins and currency, there could be no fixed standard of value, and commerce and property would be constantly exposed to all the hazards of an uncertain and fluctuating currency.

§ 248. The states are also forbidden to make any thing but *gold* and *silver coin* a legal tender in payment of debts. If they could have made any thing else a good tender, there is no species of depreciated currency which might not be paid for debts, and the difficulties, dishonesty, and bankruptcies attendant upon such a state of things will be easily understood. Any thing may be borne in civil society with more ease than that which interrupts the regular course of business, obstructs the due administration of justice, and prevents the just payment of debts. The emission of Bills of Credit, and the making any thing but coin a legal tender by the states, would produce all these mischiefs. During the revolution,¹ and both subsequent and anterior to it, the resort to such means had reduced public credit to utter contempt, and ruined thousands of honest and industrious citizens. It was the recent *experience* of these evils, and the inconsistency of such powers in the states with the existence of a national government, which prompted the prohibitions we have just recited.

§ 249. It is prohibited to the states, as well as to the general government, to pass any *bills of attainder* or *ex post facto laws*. The reason is the same. The same injustice would be worked in either case. Such

¹ 2 Pitkin's Civil History, p. 156, 157.

laws, at all times unjust and inexpedient, are peculiarly so in a country where the whole basis of the government is right and justice.

§ 250. The states cannot impair the *obligation of contracts*. This is one of the most important provisions of the Constitution, and has already occasioned much discussion, and been illustrated by several judicial decisions.

§ 251. The first inquiry is, what is a contract? *A contract is an agreement¹ to do or not to do a particular thing*. It must be made between *two* or more persons.²

§ 252. Contracts may be either *executory* or *executed*.³

An *executory contract* is one in which a party binds himself to do or not to do *something hereafter*.⁴ Thus, if two men agree to exchange horses next week, or one of them agrees to do work to-morrow, and the other to pay money for it, these contracts are *executory*, because they are to be performed at a *future time*.

§ 253. But, a contract *executed* is one in which the act to be done is *performed at once*. As, if two men agree to exchange horses now, and do it on the spot, or one agrees to convey land, and makes and delivers the deed on the spot, such contracts are *executed*, because the act required to be done is done *at once*.

§ 254. A *grant* and a contract executed are the same thing.⁴ A contract executed conveys a *thing in possession*. A contract executory conveys a *thing in action*.

§ 255. Contracts are also *express* or *implied*.⁵ *Express contracts* are those of which the terms are *expressed* in the agreement; *implied contracts* are those which are necessarily inferred from the *nature* of the agreement. An agreement that I shall pay so much for

¹ 2 Blackst. Comm. 443. ² Idem; 3 Story's Comm. 241.

³ Idem. ⁴ 4 Wheaton, 197; 12 Wheaton, 256. ⁵ 2 Blackst. Comm. 443.

an ox is an express contract. If a man work for me, for my benefit, reason, justice, and the law all imply a contract that I shall pay him for it. Both these kinds of contracts are included in the general words of the Constitution.

§ 256. The Supreme Court have decided, that a contract and a *compact* are one and the same thing.¹

§ 257. As the term contract in the Constitution is not limited, it signifies both contracts executed and executory. A *grant*, therefore, is such a contract as cannot be *impaired* by the states. Such was the decision in *Fletcher vs. Peck*.² There the state of Georgia had granted away certain lands to Peck, who had conveyed them to Fletcher for a valuable consideration; subsequent to which the state of Georgia cancelled their grant to Peck. Fletcher sued on the covenant of *warranty*, and the court held that the law cancelling the grant was unconstitutional, because *impairing a contract*, which had already vested in Fletcher a right to the land.

§ 258. The next inquiry is, what is *the obligation of contracts*? There are two kinds of obligations to contracts,—*moral* and *legal*. The obligation contemplated by the Constitution is a *legal* obligation:³ it is one arising under *civil laws*; for a moral obligation cannot be *impaired* or enforced by *human laws*. The obligation, then, meant by the Constitution, must be one which arises either from the enactments of a state, or can be influenced by those enactments. If, then, a contract is, by the laws of the place where it is made, illegal and void, that contract has no *civil* obligation, and no action can arise upon it.⁴ When it arises from civil laws, and is not by these laws illegal and void, then it is such an obligation as may be *impaired*, and consequently

¹ 6 Cranch, 136.
12 Wheaton, 257.

² *Idem*.

³ *Ogden vs. Saunders*,

⁴ 3 Story's Comm. 245.

such a one as comes within the scope of the Constitution.

§ 259. The *obligation*, therefore, must be a *civil* one, and it must be *valid* according to the municipal law. It cannot then subsist *contrary* to the *positive* law. But may it exist *independently* of it? May it exist without a remedy? Thus, if two persons make a contract of a kind which, though by the laws of the state it is perfectly valid to make, yet by the laws of the state cannot be enforced, has that contract an obligation within the meaning of the Constitution? If it has, what is it? The only obligation which it would seem to have is a *moral* one. That undoubtedly it has. But a moral obligation, it is conceded on all hands, cannot be *impaired*, and consequently is not the obligation meant.

§ 260. On this point there is great diversity of opinion. It is stated on high authority¹ that the obligation may exist independently of positive law, and be perfect without a remedy. The examples given, however, do not appear to confirm the principle laid down. Thus it is said,² that a state may have taken away "imprisonment for debt, and the debtor may have no property; but still the *right* of the creditor remains, and he *may* enforce it against the future property of the debtor. So a debtor may die without leaving any known estate, or without any known representative. In such cases we should not say that the right of the creditor was gone, but only there was nothing on which it could presently operate. But, suppose an administrator should be appointed, and property in contingency should fall in, the right might then be enforced to the extent of the existing means." These examples are cited by the learned commentator to show that *right may exist without a remedy*. With due deference to an opinion which is at once authoritative and respected, it is thought that he

¹ 3 Story's Comm. 247.

² *Ibid.*

has, in these examples, manifestly *confused* the *remedy* given by the law, with the *object* upon which that remedy acts. What is a *remedy* at law? We are told by an authority¹ at least as high as the one above cited, that "the law consists of several parts, one *declaratory*, whereby the *rights* and *wrongs* are clearly classified and laid down; another *directory*, whereby the subject is instructed to observe these rights, and abstain from these wrongs; a third *remedial*, whereby a method is pointed out to recover his rights, or redress his wrongs."

§ 261. Here the *remedy* in law is defined to be the *method* whereby a man may recover his rights or redress his wrongs. Now, in the example first cited above, of a debt, the *remedy*, or the *method* given by law is, first the *action of debt*, next the *judgment* upon that action, and lastly the *execution* under that judgment; now the person or property of the debtor constitutes the *object* upon which that remedy acts: both may be *out of the reach* of the remedy, and yet the remedy exist, and be *perfect at law*. It is not perfect in its *consequences*, merely because other circumstances, *disconnected* from the *remedy*, have prevented that remedy from attaching to the object. The *remedy* in the example above stated attaches to the property; that property, by one of the conditions of human life, whether poverty or misfortune, does not exist. Here then the *right* to a remedy is perfect: the remedy itself, viz. *action, judgment, and execution* is perfect; but the *object* upon which the remedy is to attach is out of reach. The case is the same in the second example, of an intestate dying without an estate or representative. The municipal laws of almost every civilized state either require that the Probate Court should appoint an administrator, or give power to the *creditor* to have one appointed. The administrator being appointed, the sec-

¹ 1 Blackst. Comm. 53, 54.

ond example is precisely the same as the first: the administrator, as the representative of the intestate, is the debtor, and the right, the remedy, and the object the same as in the other case. The *remedy* here spoken of is the remedy *at law*. The circumstance of the existence of property or not, on which the remedy can attach, is one which constitutes *no part* of the remedy at law; for it is obviously one which no human law can regulate. If human intelligence could have devised a means by which the debtor should always have property to answer the demands of his creditor, it would be an act of wisdom which never would have been neglected. We may conclude, then, that if a right can exist without a remedy to enforce it, these are not examples of it. Are there any other examples, either real or imaginary, by which such a principle can be illustrated?

§ 262. The meaning of the term *obligation* always implies a *power to enforce it*. To *oblige* is to *compel*. According to Justice Blackstone,¹ the strict sense of obligation is such a constraint as *makes it impossible for a man to act otherwise*.

§ 263. Civil obligation, then, consists in the *remedial power of enforcement*. This seems to have been the opinion of several eminent judges in the celebrated case of *Ogden vs. Saunders*.² In that decision the judges gave their opinions *seriatim*; and in respect to the obligation of contracts, as well as several other points, were widely different in their judgments. These questions are, therefore, far from being settled, although the *decision upon the facts of that case* is doubtless permanent law.

§ 264. Justice Washington said, that "the obligation of a contract is the *law which binds the parties to perform their agreement*." While he admitted that the

¹ 1 Blackst. Comm. 57.

² 12 Wheaton, 260.

common law of nations, or the moral law, might form a part of the obligation of a contract, he insisted that this law is to be taken in strict subordination to the municipal law of the land where the contract is made or is to be executed.

§ 265. Justice Thompson said, "for it is *the law which creates the obligation*, and whenever, therefore, the *lex loci* provides for the dissolution of the contract in any prescribed mode, the parties are presumed to have acted subject to such contingency."

§ 266. Justice Trimble said, "it may be fairly concluded, that the obligation of the contract consists in the power and *efficacy* of the law, which applies to and enforces performance of a contract, or the payment of an equivalent for non-performance. The *obligation* does not inhere and subsist in the contract itself, *proprio vigore*, but in the law applicable to the contract. This is the sense, I think, in which the Constitution uses the term *obligation*."¹

§ 267. Chief Justice Marshall then said,² "*obligation* and *remedy* then are not identical. They originate at, and are derived from, different sources;—it would seem to follow that law might act in the remedy without acting on the obligation."

Enough of these *dicta* have been cited to show, that while the majority of the court agreed in the decision which was made, the individual judges held very different opinions upon the main question; the obligation of contracts.

§ 268. The next great question in respect to the impairing the obligation of contracts, arose in respect to the Insolvent Laws of the several states. The principal cases upon this point are those of *Sturges vs. Crowninshield*;³ *M^cMillan vs. M^cNiell*,⁴ and the case

¹ 12 Wheaton, 818.

² *Idem*. 350.

³ 4 Wheaton, 123.

⁴ *Idem*. 309.

just cited, of *Ogden vs. Saunders*. The substance of these decisions has already been given in another place.¹

§ 269. The next decision upon this subject was in regard to *grants*. In the case of *Terrett vs. Taylor*,² the Supreme Court decided, that a legislative grant, competently made, vested an *indefeasible and irrevocable title*. A state cannot revoke what it has once granted away; nor can the Legislature repeal statutes creating private corporations, and divest the rights under them, without the consent or default of the corporators.

§ 270. One of the most important cases upon the subject is that of *Dartmouth College vs. Woodward*.³ A charter was granted by the British crown in 1769 to the Trustees of Dartmouth College, who acted under it, established the college, and acquired property. The Legislature of New-Hampshire made material alterations in the charter, transferred the government of the college to the government of the state, and made the will of the donors subservient to their own.⁴ The Supreme Court decided that such a *charter* was a *contract* within the meaning of the Constitution; that the college was a private institution, not liable to the control of the Legislature; and that, therefore, the act of the Legislature was an act impairing the obligation of contracts, and void. The court said, that charters of an eleemosynary kind, for the benefit of religion, education, or charity, administered by trustees, was within the purview of the Constitution; and that rights acquired under them were vested and protected by it. No doubt such is the clear dictate of reason; and such institutions, if any, ought to be protected from the ruthless hands that are too often laid upon them.

¹ Page 95.

² 9 Cranch, 43.

³ 4 Wheaton, [518.

⁴ 1 Kent's Comm. 390.

§ 271. As the prohibition in relation to *ex post facto* laws is confined to retrospective criminal laws,—and as there is a class of retrospective laws which are not criminal,—this last class is restricted only by the prohibition against the impairing the obligation of contracts, and there is therefore a large class of retrospective laws which it is constitutional for the states to pass. Thus, a law abolishing imprisonment for debt, as well as to past as to future contracts, may be constitutionally passed by the state legislatures.¹ All retrospective laws are, however, unjust and impolitic; for they destroy the relation of circumstances under which the parties upon whom the law acts stood at the time they made the contract, or performed the act in question.

The last prohibition of this clause is, that the state shall grant no *title of nobility*. The reason of this is the same as that in regard to the national government: it was an exclusion of every thing like nobility and aristocracy.

§ 272. Clause 2d. *No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts laid by any state on imports and exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.*

§ 273. The Constitution had already restricted Congress in the power to lay taxes, by requiring that direct taxes should be in proportion to the census, and indirect

¹ 2 Peters' Supreme Court Rep. 870.

taxes *uniform*; that no duties should be laid on exports, and no preference given to the commerce of one state over another. If such restrictions were found necessary for the general government, much more were they for the several states, who, by local regulations, were at all times liable to collision, and might destroy the commerce of each other. In fact, the *revenue* from commerce is another *attribute* of *national sovereignty*, and could safely be trusted only to that body in whom the national sovereignty resided, and to whom was intrusted the *national defence* and the *general welfare*. Sufficient power over internal commerce is left to the states, with the *consent of Congress*, to execute their *inspection laws*,—all the rest is taken away.

§ 274. Inspection laws are not strictly regulations of commerce, though they may have an influence upon it.¹ The object of inspection laws is to improve the *quality* of articles produced in the country, and fit them for use and exportation.

§ 275. In the year 1821, the state of Maryland enacted, that all importers of foreign articles, commodities, &c., by bale, package, &c., and those persons selling the same at wholesale by bale, package, &c., shall, before they are authorized to sell, &c., take out a *license*, for which they shall pay *fifty dollars*, &c. This act was resisted as a violation of the Constitution, and the Supreme Court decided that it was *unconstitutional*. The ground of the decision was, that although an import duty is generally secured before the goods are landed, yet a tax is not the less an *impost*, though levied on them after they were landed; that a *duty on imports* is not merely a *duty on the act of importation*, but is a *duty on the thing imported*.² Nor does it make any difference whether the duty was imposed by way of license upon the occupation, or as a direct duty on the article.

¹ Story's Comm. 472.

² 12 Wheaton's Rep. 419.

§ 276. It has already been seen that a state has no power to tax the Bank of the United States, because they have no power to restrain the constitutional *means* given to the government to execute constitutional ends.

§ 277. In the same manner it has been decided that a state has no power to tax stocks issued for loans to the United States.¹

§ 278. *Tonnage duties* are taxes laid on vessels at so much *per ton*. After what has been said upon the propriety of imposts on imports and exports by the states, the reason for prohibiting a duty on tonnage will be evident. If the states could have laid duties on tonnage, they could have effected, indirectly, all the mischiefs flowing from a power in the states to tax imports and exports.

§ 279. The states shall not keep troops or ships of war in time of peace: this again is founded on the same principles as the other prohibitions relative to the exercise of national sovereignty; to keep troops, make war, &c. are attributes of *national sovereignty*, which could not exist at once in both the general and state governments, without constituting them *separate nations*,—a result which it was the very object of the Constitution to prevent. Under the recent ordinances and laws of South Carolina, a body of 12,000 *volunteers* were called out,—a part of whom were armed, disciplined, and maintained at the expense of the state. In consequence of the compromise in respect to the Tariff, the question of the legality of this array has not arisen; but there can be no reasonable doubt that it was in every respect *troops*, and as such *unconstitutional*. The prohibition does not extend to a *municipal guard*, such as those kept to guard penitentiaries and arsenals; for these are not troops, but merely ministers of the civil law.

§ 280. The power to make treaties, alliances, and

¹ Warton vs. The City Council of Charleston, 2 Peters' R. 449.

confederations had, in another place, been taken from the states; to this prohibition is here superadded that of making compacts and agreements *with another state or with a foreign power*, without the *consent of Congress*. It may be asked what compacts and agreements are here meant? As alliances, treaties, &c. had before been mentioned, this clause refers¹ to "private rights of sovereignty; such as questions of boundary, interests in land situated in the territory of each other, and other internal regulations for the mutual comfort and convenience of states bordering on each other." The compact between Virginia and Kentucky is of this class.

§ 281. No state can control the exercise of any authority under the general government.²

§ 282. The state courts cannot annul the judgments, or determine the extent of the jurisdiction, of the courts of the Union.³

§ 283. No state tribunal can interfere with seizures of property made by revenue officers under the laws of the United States.⁴

§ 284. No state can issue a *mandamus* to an officer of the United States. The official conduct of an officer of the government of the United States can only be controlled by the power that created him.⁵

§ 285. State laws, as, for example, statutes of limitation, insolvent laws, &c., have no operation upon the rights or contracts of the United States.⁶

¹ 3 Story's Comm. 272. ² 1 Kent's Comm. 382. ³ 5 Cranch, 115. ⁴ 2 Wheaton, 1. ⁵ 6 Wheaton, 598. ⁶ 8 Wheaton, 253.

ARTICLE II.

OF THE EXECUTIVE.

SECTION I.

§ 286. Clause 1st. *The Executive power shall be vested in a President of the United States of America. He shall hold his office during a term of four years, and, together with the Vice-President, chosen for the same time, be elected as follows :*

§ 287. The chief points laid down in this clause are, 1st, The *unity* of the executive ; 2d, That he shall be *elected* ; 3d, He shall hold his office for a *limited time* ; and, 4th, That he be styled *President*.

1st. As to the *unity* of the executive, common sense, as well as the agreement of the best writers,¹ unite in the opinion, that the office which is entirely *ministerial*,—and in our government the executive is so,—is better filled by one head than by several. History has in all instances condemned the vesting executive power in the hands of a council, and whenever the experiment has been tried among the states, it has proved disastrous.

2d. The next principle laid down is, that the executive shall be *elective* ; and this is the distinguishing characteristic of our government from that of England, France, and other governments of Europe, where some portion of constitutional liberty is enjoyed. It is not the power possessed by the executive so much as it is the *authority* whence, and the *mode* in which, it is derived, that constitutes the difference between these governments and ours.

¹ Montesquieu's *Spirit of Laws*, book II. chap. 6 ; De Lolme on *Constitution of England* ; 1 Kent's *Comm.* 253, 255 ; 3 Story's *Comm.* 282.

The *hereditary* and *perpetual* principles which prevail in all the governments of Europe for ever destroys all *accountability* on the part of the executive to the people ; hence the English maxim, " The king can do no wrong." He is, by their constitution, placed above *inquiry* and *accountability*. In this country, however, there is *accountability* in all the departments of the government. The executive is *elective*, and his office of limited duration ; so that if he err or offend, he may soon be held amenable at the bar of public opinion.

3d. The office is *limited*.—This principle, like that of election, is necessary to give a full and perfect control of the public opinion over the executive, and make it responsible.

4th. The style of *President* is very appropriate to the office of one whose duty it is to *preside* over the administration of public affairs.

Of the Vice-President we shall speak hereafter.

§ 288. Clause 2d. *Each state shall appoint, in such a manner as the Legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the Congress ; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.*

§ 289. The electors are to be appointed in the *manner* which the Legislature shall direct. In the different states, different modes of electing the electors have prevailed. In some, the district mode has prevailed, as in the state of Maryland ; in others, as in Delaware, they are elected by the Legislature itself ; but generally they are elected by general ticket. The first has been found to fritter away the power of the state, and the second seemed to take it away from the people.

The number of electors a state is entitled to is equal to the whole number of senators and representatives ;

thus, Ohio has 19 representatives and 2 senators; consequently she is entitled to 21 electors.

No qualification is required of an elector, except he shall *not* hold an office of profit or trust under the government of the United States.

§ 290. The next clause in the Constitution has been abrogated by an amendment, passed by the constitutional number of states in 1801, which we shall presently recite.

That clause of the Constitution required that the electors should vote for *two persons*, without designating either of them for President or Vice-President. That the person having the greatest number of votes, if that be a majority of the electors, shall be President; and if there be more than one who has such a majority, and have also an *equal number* of votes, then the House of Representatives shall immediately choose by ballot one of them to be President; but if no one has the majority, then from the *five highest* the House shall choose the President. Each state in the House shall have *one vote*. After the choice of President, the person having the highest number of votes shall be Vice-President, and if two have an equal number of votes, the Senate shall choose between them.

§ 291. As in the mode here pointed out there was no distinction made between President and Vice-President, it follows that, in party conflicts, where the whole party support one ticket, it must necessarily happen, that unless a vote be dropped, two persons would have an equal number of votes, and consequently the election devolve upon the House of Representatives. This difficulty actually occurred at the election of 1801, at which *Jefferson* and *Burr* received the same number of votes. The House of Representatives, being divided by violent party feelings, protracted the election through thirty-six ballotings, and at last made the election only

in consequence of the danger of vacating the executive office. The result of that canvass gave rise to an amendment of the Constitution, prescribing the present mode of election.

The following is the amendment :

§ 292. 12th Amendment to the Constitution. *The electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same state with themselves ; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President ; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the Senate ; the president of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted ; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed : and if no person have such a majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in*

case of the death or other constitutional disability of the President.

§ 293. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such a number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President: a quorum for that purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

§ 294. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

§ 295. By this arrangement, the competitors for the vice-presidency were no longer candidates likewise for the presidency; different persons are to be distinctly voted for as candidates for each office. This is said to diminish the dignity of the office of Vice-President, but it seems to be absolutely necessary to destroy the very confusion of persons and offices which occurred before.

The Senate are at liberty now to choose the Vice-President immediately after counting the votes, which before they could not have done without a choice of President. This is certainly an improvement.

§ 296. The mode of choosing the President does not yet seem to be perfect. A discussion might arise, on opening the certificates, as to the competency of the electors, the authority of the votes, &c., for which the Constitution has made no provision.¹

An instance of *defect* is put in the case in which an *equality* of votes should be given for more persons than the number from which the choice is to be made.²

§ 297. 3d Clause. *The Congress may determine the*

¹ 3 Story's Comm. 327.

² *Idem*.

time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

The reason of this clause is obvious. Were the time of giving the votes different in the different states, there would be the greatest possible room for intrigue among the electors, and as their body is small, some of them might be influenced by undue means.

The power of determining the *time* of choosing the electors is also given to Congress. They have not, however, so exercised as to appoint the same time. In 1792, they enacted that the states should choose their electors within 34 days of the first Wednesday in December. The consequence is, that within that time the elections are still made at *different periods*. It would seem that, to prevent all possibility of improper influence over the people, the elections should all have been held on the same day. As it is, those which are held last must be more or less influenced by those which are held first, upon the principle of a common desire in human nature to be on the strong side.

§ 298. 4th Clause. *No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.*

That the chief executive officer should be a citizen of the United States, and a native, is unquestionable. The age of *thirty-five* is *young enough*. The Presidents elected have all been more than that; most of them between sixty and seventy. Indeed, there will always be enough of the fire of human passions infused into the executive by partisans without the aid of the warmth and ambition of youth.

§ 299. By *residence* in the United States is not meant

an absolute *inhabitancy* in the United States during the whole period, but such an *inhabitancy* as constitutes a *permanent domicil*. Any other construction would take away the citizenship of any public officer resident abroad in pursuance of his duty.

§ 300. 5th Clause. *In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.*

Congress, on this head, have provided, that in case of the removal, death, or resignation, or inability of the President and Vice-President, the President pro tem. of the Senate, and in case there shall be no such President of the Senate, then the Speaker of the House of Representatives for the time being, shall act as President, until the disability be removed or the vacancy filled.

§ 301. The case of a vacancy in the offices of President and Vice-President, by reason of *non-election* at the proper period, is not provided for in the Constitution. Congress have declared that, in case of such an event, there shall immediately be held a new election. Whether this be constitutional or not is unsettled.

§ 302. 6th Clause. *The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.*

The object of this provision is plain enough; it would not be proper to allow either the general or state governments an opportunity, by increasing or diminishing the

salary of the executive to play upon its wants or its avarice. Congress have permanently fixed the salary of the President at twenty-five thousand dollars, and that of the Vice-President at five thousand dollars.

§ 303. 7th Clause. *Before he enter on the execution of his office, he shall take the following oath or affirmation:*

I do solemnly swear (or affirm), that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.

The solemnities of an oath seem to be proper and necessary to all responsible offices, and peculiarly so to that great and sacred one, the chief magistracy of a great republic.

SECTION II.

§ 304. 1st. Clause. *The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.*

The power to command the army and navy, militia, and entire military armament, flows necessarily from the nature¹ of an executive. It is made the duty of the executive to enforce the laws, preserve order, and repel invasions,—duties which could not be performed without the command of requisite force.

§ 305. The power of the President to *delegate* his authority to another officer was disputed during the last war.² The exception, however, seems untenable, from

¹ 1 Kent's Comm. 264.

² 8 Mass. Rep. 548.

the reason that, if no one but the President in person can command them, then the President can only control one detachment in *one place*,—a result evidently contrary to the intention of the Constitution. During the administration of Washington, the governor of Virginia commanded several detachments from different states under the appointment of the President, without dispute.¹ The power to *require opinions in writing from the heads of departments* is the mere expression of a power which was necessarily incident to the organization of the executive.

§ 306. The power to grant *reprieves* and *pardons* is one which requires to be, and is exercised. It has been supposed by some that a perfect criminal code requires no such power; but there is no *perfect* criminal code. There is no such administration of human justice, that, after the conviction of the prisoner, it shall always be improper and unjust to pardon him. The only proper depository of such a power is the executive. The Judiciary cannot pardon without first supposing itself wrong in its own decisions; nor can the Legislature without relaxing the law. He, however, whose only duty it is to execute the laws, which others have made and adjudged, may very consistently be allowed to exercise a discretion in punishment.

§ 307. 2d Clause. *He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the consent and advice of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may, by law, vest the appointment of such inferior off-*

¹ 5 Marshall's Washington, 580.

cers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Some very important political questions have arisen out of this provision, and agitated the minds of eminent statesmen, as well as the councils of the country.

§ 308. In the year 1796, a treaty was made¹ by Mr. Jay with Great Britain, containing some stipulations very offensive to the House of Representatives. The treaty was ratified by the President and Senate, but required a law to carry it into effect. On that occasion, after much debate, the House of Representatives declared by a vote of 62 to 37, that they had the right to withhold their assent to the *validity* of a treaty, and might, at their pleasure, withhold a law to carry it into effect. This doctrine was denied by President Washington, and the exclusive power of the President and Senate affirmed. In their final decision upon the treaty, the House deemed it expedient, by a vote of 51 to 48, to execute the treaty, but reserved to themselves the rights they claimed.

In 1816, the same question occurred, and the House then decided that the *sole power* over treaties rested with the Senate and President.

§ 309. The predominance of opinion now is, that the power to make treaties, &c., is vested in the executive and two-thirds of the Senate. The great reason is, that the Constitution has made treaties, as well as laws, the *supreme law* of the land, and as such has made them, when ratified, a binding *contract with other nations*.²

§ 310. The next power conferred on the President, with the advice and consent of the Senate, is the *appointment* of ambassadors, ministers, consuls, and other public officers. This power is necessary to, and a part of, the executive power; for the executive duties have to be performed by the officers, and if they are not

¹ 5 Marshall's Life of Washington, 650.
Debates, 250, 275.

² 4 Elliott's

appointed by, and not responsible to, the executive, he cannot be accountable for the performance of those duties.¹

§ 311. As the Constitution gave power "by and with the advice and consent of the Senate" to make appointments, but said nothing about removals, it early became a question whether the power of *removal* was vested in the President *alone*, or in the President and Senate *jointly*. In the year 1789, the question came before Congress, on a motion to strike out of the act creating a Secretary for Foreign affairs, a clause vesting the President with the power of removal. After a long and animated debate, the House decided by a vote of 34 to 20 not to strike out the clause,—thus affirming the power of the President. In this debate, it was expressly declared, that the decision was intended to be permanent, and act as an exposition of the Constitution; as such it has remained, and the power of the President to remove was never questioned till recently. In favour of the power were Messrs. Madison, Ames, Boudinot, and Baldwin; against it, Messrs. Sherman, Gerry, Smith, and Jackson.

§ 312. A learned commentator² has recently expressed *surprise*, that this power of removal should so long remain in the President's hands without question, and intimates that it may be liable to abuses, and is at best of questionable constitutionality. To this it may be answered, that the decision of this question was one of the most solemn ever made by Congress, and, therefore entitled to high respect. As to the question itself, any other decision than that made, may at once be reduced to an *absurdity*. Thus, suppose the power is vested in the President with the advice and consent of the Senate; the President wishes to remove an officer, and communicates his wish to the Senate: that body

¹ 4 Elliott's Debates, 148.

² 3 Story's Comm. 395, 396.

calls for the reason; the President gives it, and the officer, through the mouth of some senator, replies: the President is then reduced to the level of an accuser, or a defendant, in respect to one of his own officers, before a *collateral* branch of the government, which assumes to decide between them, and be superior to both! And suppose the Senate does not consent to his removal,—the officer retains his place after he has become obnoxious to his superior, and it may be, obtains impunity for his offences. Is this consistent with either the dignity or the responsibility of the executive? It is supposed by some very judicious persons, that an officer is entitled to his place *during good behaviour*, and that he acquires something like an *estate* in his office. But no principle like this is recognised in the Constitution. On the contrary, every thing there is made *directly* or *indirectly elective*, and consequently nothing is placed on a more permanent footing than *public opinion*. When that changes, minor things must change with it.

§ 313. Such *inferior offices* as they may think proper, Congress may vest in the President alone, in the courts of law, or in the heads of departments. A learned commentator¹ supposes, in consequence of this clause, that Congress may require the consent of the Senate to such appointments: now this is not at all obvious; for the Constitution, after giving the appointment of *superior* officers to the President and Senate, may give the appointment of *inferiors* to whom? to this same President and Senate? No, but to the President *alone*, the courts of law, or the heads of departments. After this *express* designation of these persons, it is not in the competency of Congress to confer the appointment on others.

§ 314. It is decided, in reference to the power of appointments, that the Supreme Court cannot issue a man-

¹ 3 Story's Comm. 397.

damus to compel the delivery of a commission to an officer after it is made out. This was so decided in a case¹ in which the commission had been made out and deposited in the Secretary of State's office, during the administration of Mr. Adams, and on the accession of Mr. Jefferson he withheld it,—deeming² that *delivery* was necessary to its perfection, and being himself unwilling to appoint the man. The case went off for want of *original* jurisdiction, but the court expressed the opinion, that the withholding the commission was a *violation of a legal right*.

§ 315. 3d Clause. *The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.*

The appointments thus made expire at the end of the next term of the Senate by the constitutional *limitation*. Suppose the President should fill a vacancy during the recess of the Senate, and should then nominate this officer to the Senate, and the Senate should reject him; and the President should, on the first day of the next recess, *appoint him again* to fill the vacancy, may he not in this manner perpetuate an appointment without the consent of the Senate? Certainly this cannot be the intention of the Constitution, for it would defeat the co-ordinate power of appointment which it has vested in the Senate: Yet such a practice³ has in some instances recently obtained. Where is the remedy? Nobody is vested with power to annul the appointment; but it can be effectually restrained by withholding the *appropriations*. Here, then, is an instance of the signal virtue of powers, effective and restraining, vested directly in the representatives of the people.

§ 316. Does the power to fill up *vacancies* give the

¹ 1 Cranch, 137. ² 4 Jefferson's Correspondence. ³ See the Journals of the Senate, 1830, 1831, 1832, 1833; cases of Gwynn and Gardner.

President authority to *appoint* and *commission* ambassadors during the *recess* of the Senate? In this manner President Madison appointed the Commissioners to negotiate the treaty of Ghent. But this is not a *vacancy*, neither does it *happen*, and the Senate held accordingly, in 1822, and decided, that the President could not create the office of minister during the recess of the Senate without the consent of the Senate.

SECTION III.

§ 317. *He shall, from time to time, give the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he may think proper; he shall receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.*

§ 318. The President, in conformity with the first part of this section, lays before Congress, at the first day of their session, a *Message*, in which is exhibited the operations of the government during the past year, and which is accompanied with reports from the chief officers of government, illustrating the condition and prospects of each department of the government. In addition to which the President gives his opinion upon all the measures which, in his opinion, ought to be acted upon. During the administration of Presidents Washington and Adams, the President met Congress in person, and delivered oral speeches, to which answers were returned, similar to the mode still adopted by the constitutional governments of Europe. President Jefferson, however, abolished that custom, and ever since the message has been sent to Congress, and no answer re-

turned. The President communicates to Congress all the new circumstances, views, or information which may from time to time occur; and Congress, by calls upon the different departments, obtain all the documentary facts which they may desire.

§ 319. The power to call an extraordinary session of Congress may become absolutely necessary to the public safety. There have been three extraordinary sessions called; one in 1797, by President Adams, on the occasion of the difficulties with France; another in 1809, by President Madison; and another in 1813, also by President Madison.

§ 320. The President has a general authority to *execute the laws*; and in the exercise of his political duties, independent of the specific limitations imposed by the law and the Constitution, he is subject to no control, but is amenable only to his conscience and his country.

§ 321. As incident to the power of *receiving*¹ ambassadors, the President has the power to *reject* and *dismiss*² them.

§ 322. Incident to the executive functions is the power to perform them without let or hinderance.³

SECTION IV.

§ 323. *The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.*

In what mode this impeachment is to be made and tried, we have seen elsewhere. *All officers* are liable to this impeachment for offences, although there is no prohibition against other kinds of removal.

¹ Federalist, 69.

² Case of Genet, 5 Marshall, 443.

³ 3 Story's Comm. 419.

ARTICLE III.

JUDICIARY.

SECTION I.

§ 324. *The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.*

§ 325. The Supreme Court is *instituted* by the Constitution, but receives its *organization* from Congress.¹ The Constitution left the number of the judges, the mode of its proceeding, and the character of its officers, to be subsequently determined by the Legislature. By successive acts,² Congress have organized the Supreme Court by creating a Chief Justice and six Associate Justices, any four of whom make a quorum. It holds one annual term at the seat of government, and though four judges are necessary for general business, yet any one of them may make all the necessary orders preparatory to trial, and one judge attends annually at the city of Washington for that purpose.

§ 326. The inferior courts organized by Congress are the Circuit and the District Courts. ³The Circuit Court is composed of one Judge of the Supreme Court

¹ 1 Kent's Comm. 279.

² Acts of April, 1802; Feb. 1807.

³ Kent's Comm. 282.

and the District Judge, except when the District Judge is interested, when it may be held by the Circuit Judge. The number of Circuits is equal to the number of Supreme Judges, and are composed of two or three districts generally, but some of the western states, as Indiana, Illinois, Missouri, &c., have no Circuit Courts.

§ 327. Another court, inferior to the Supreme Court, is the District Court.¹ This is composed of a single judge, who holds annually four terms, and special courts at his discretion. The districts are composed generally of a single state, but sometimes of a part of a state, as in New-York and Pennsylvania.

The judges hold their offices *during good behaviour*. Any other provision than this would place them at the mercy of the other branches of the government. It is plain that the members of distinct branches of the government must be wholly independent of the other branches, or the whole would soon become mixed up into one absorbing power. In the state of New-York, sixty is the age at which a judge's office expires, and in Connecticut, seventy. These were both, however, provisions made to answer a temporary and party purpose. They are as anomalous in jurisprudence as they are contrary to the maxims derived from uniform experience. Youth for energy and age for judgment are rules everywhere illustrated in human life. The ablest judges that ever adorned England and America, Mansfield and Marshall, gave their best decisions after the age of seventy.

§ 328. Their compensation shall *not be diminished* while in office. This is obviously necessary. Life depends upon sustenance, and to take from the judges their salaries would drive them from office.

¹ Kent's Comm. 283.

SECTION II.

§ 329. Clause 1. *The Judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects.*

The 11th amendment to the Constitution declares, that *The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.*

§ 330. The jurisdiction of the Supreme Court is here made coextensive with *national objects*, and independent of *other branches* of the government. "There is no liberty if the judiciary power be not separated from the legislative and executive powers."¹ *The Constitution and the laws of the United States* are to be construed and adjudged of by the Supreme Court. How could they be adjudged by the State Courts without at once making the States superior to the Union? Yet it must be observed, that the state, as well as the other courts, have the power to construe United States and all other laws, when they come *incidentally* in question upon the trial of a cause.

§ 331. All matters in relation to treaties, public ministers and consuls, admiralty and maritime jurisdiction,

¹ Montesquieu's *Esprit de Loix*, book 11, chap. 6.

come under the sole cognizance of the Supreme Court. These things belong to the *laws of nations*; hence, only a *national court* can sit upon them. The Supreme Court is the national court of the United States, and in this single clause, we see at once the wide distinction placed by the Constitution between the United States' Courts and the State Courts. By this, taken in connexion with the other clauses upon the jurisdiction of the Supreme Court, and the prohibitions upon the states, the Supreme Court is made a *national*, while the State Courts are merely *municipal courts*.

§ 332. The next sentence is in perfect conformity to this principle; for if the Supreme Court be *national*, it is the proper *arbiter* between the different states, and in relation to all controversies which involve the rights and laws of different states. Accordingly, the Constitution gives the court jurisdiction of *controversies* between *two or more states*; between a *state* and the *citizens* of other states, or foreign states when the *state is not defendant*; and between citizens of the same state claiming under *grants of different states*. The simple reading of these provisions is a sufficient answer to every theory which supposes that the *states* have sufficient power to *annul* the laws of the *Union*. In this article a tribunal is erected superior to all state courts, and by the express direction of the Constitution, a competent *arbiter* between the states themselves. "There must be some tribunal than which there can be no higher," is an axiom self-evident in all governments which purport to have system and stability; for without it they must become mere anarchies. In the Supreme Court, the Constitution has established that tribunal in the United States, and it is manifest, that within its jurisdiction, pointed out by the Constitution, it is above all others. When we go behind this, there is nothing left but *the people*,—whose work the Constitution itself is,—but, who cannot be appealed to against their own laws, till they have first resolved those laws to be a *nullity*, and

themselves into a *state of nature*. This is a right which is left to all people of all nations, savage and civilized, —the *right of rebellion*,—never to be exercised till sufferance is exhausted. Provision is made, as we shall see hereafter, for *amending* the Constitution, but this presupposes *a constitution*, and *a government*; this amendment then, in the forms prescribed by the Constitution, is not the exercise of that ultimate right we have spoken of above.

§ 333. But, while it is affirmed that the Supreme Court is the ultimate tribunal, it must be borne in mind that the functions of a court are to say *what the law is, and not to make it*. They are judges, not lawgivers. “The judicial department has no will in any case. Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing.”¹

§ 334. In the clause above the phrase is read “all cases in law or equity.” The reference here is plainly to those *common law* distinctions of law and equity remedies, which before existed in the jurisprudence of England and this country. So far as the remedies go, the Constitution recognises the existence and the operation of the common law.² And it would seem, as the reference is direct to the remedy at common law, that the *principles* upon which the remedy is to be applied must be the same; and such is the interpretation and mode of administering justice in such cases in the courts of the United States. What is a *case*, as here contemplated? “A *case* is a suit in law, or equity, instituted according to the regular course of judicial proceedings; and when it involves any question arising under the Constitution, laws, or treaties of the United States, it is within the judicial power confided to the Union.”³

¹ *Osborne vs. Bank United States*, 9 Wheaton's Rep. 866.

² 3 Story's Comm. 506.

³ Id. 507; 1 Tucker's Blk. Comm. App. 418, 420; *Madison's Virginia Resolutions*, 1800.

§ 335. To understand the jurisdiction of the Supreme Court, we must consider the next clause of this section, which is,

2d Clause—*In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and such regulations as the Congress shall make.*

§ 336. Jurisdiction may be considered, 1st, With reference to the *parties*; 2dly, In relation to the *subject matter*; and 3dly, In respect to the *realm or locality*.

1st. Jurisdiction in reference to the *parties*. The *parties* who come within the jurisdiction of the Supreme are, 1. Ambassadors, public ministers, and consuls; 2. The United States; 3. The States; 4. Citizens of different states; 5. Citizens of the same state; 6. Foreign states, citizens, or subjects.

§ 337. 1. Ambassadors, public ministers, and consuls. The grades of public ministers, and the laws which apply to them, we shall see in another place.¹ The rights, duties, powers, and privileges of public ministers are determined, not by municipal constitutions, but by the law of nature and nations, which is equally obligatory upon all nations. Consuls are not strictly *ministers*, but merely *commercial agents*. The Constitution, however, has, in relation to the courts, placed them upon the same level as ministers. In cases *against* ministers and consuls, the jurisdiction is supposed exclusive.²

The *indictments* found against persons for offering violence to ministers, &c., and their servants, do not come within the scope of the phrase, *affecting ambassadors, &c. &c.* The minister is not a party to the record.³ Yet if he be not a party, the case may be one

¹ Chapter on the Practical Operation of the Government.

² 1 Kent's Comm. 44.

³ 3 Story's Comm. 524.

which *affects* him in interest, and the court has decided that in such a case it has jurisdiction.

§ 338. 2. *The United States.* To enforce the rights of the United States, they must sue either in their own courts, or those of the states. In the latter they would at once be subject to the states, the very end which the Constitution was formed to prevent. In their own courts they could enforce their own rights, and have a uniform rule of justice. The latter, therefore, was adopted. The clause which conferred this jurisdiction on the Supreme Court gave no power to individuals to bring suit against the United States, nor have they or the states any such power. It is inherent in the nature of *sovereignty* not to be amenable to any private person.¹ The same exemption extends to every state in the Union.² What remedy, then, has the citizen against the national government for injustice and injury? If it be an oppression exercised by public functionaries upon the body of the people, the people have, through the Constitution, the power of removing them. If the oppression be in the exercise of unconstitutional powers, the functionaries who wield them are amenable for their injurious acts to the judicial tribunals of the country, at the suit of the oppressed.³

§ 339. The government is, *in itself*, incapable of a *personal wrong*, such as assault and battery, and personal violence.⁴ In respect to property, the remedy lies against the *immediate perpetrators*, who cannot shelter themselves under an agency from the government. Such agent, like every other violator of the laws, must refund in damages to the injured party.⁵

§ 340. In the case of *contracts*, however, the agent is not responsible when lawfully made, and the government cannot be sued; hence, the only remedy is by

¹ Story's Comm. 538.

² *Ibid.*

³ *Ibid.* 539.

⁴ *Ibid.*

⁵ *Ibid.*

legislative interposition,—an appeal to Congress. This may be justly considered as a defect upon the part of Congress, who have the right to provide a mode of settling private rights. In this respect, as in every other concerning justice between public and private rights, the contrast between us and the government of England is strongly against us. There the subject is allowed to bring what is called a petition of right before the Chancellor, who as a matter of duty, hears it, and administers right according to the fact.¹

§ 341. 3. Another class of parties under the jurisdiction of the Supreme Court are the *States*. The provision subjecting the states to the jurisdiction of the Supreme Court, brings them at once within the sovereignty of the Union, even if all the powers before vested in the national government had not. This jurisdiction is frequently exercised, and although the states have often been much irritated, yet they have uniformly submitted. As the amendment to the Constitution has taken the states out of the jurisdiction of the Supreme Court when the suit is *against* them by individuals, it becomes important to inquire when a state is to be deemed a party, so as to avail itself of this exemption? “A state is a party only when it is on the record as such, and sues or is sued in its political capacity.”² It is not sufficient that it has an interest in the suit, as between other persons, or that its powers and duties come incidentally in question.³ The same principle applies to incorporations under the state; thus an incorporated bank, in which the state is stockholder, is suable, although the state is exempt from the action.⁴ “As a member of a corporation, a government never exercises its sovereignty.”

§ 342. It is laid down as “a rule, which admits of no

¹ 3 Story's Comm. 541.

² Id. 549.

³ 3 Dall. R. 411; *United States vs. Planter's Bank of Georgia*, 9 Wheaton, 904.

⁴ Story's Comm. 565.

exception, that in all cases under the Constitution of the United States, where jurisdiction depends upon the party, it is the party named on the record."

§ 343. 4. The next class of *parties* are "Citizens of different states." The first inquiry here is, who is a citizen of a state, and how does he change his citizenship? Does it depend upon his domicil, or residence, or upon any other principle? Judge Story has answered these questions in his commentaries in a very satisfactory manner. "The Constitution," says the commentator, "having declared that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states, every person, who is a citizen of one state, and removes into another, with the intention of taking up his residence and inhabitancy there, becomes in reality a citizen of the state where he resides; and he then ceases to be a citizen of the state from which he has removed his residence."¹ What circumstances constitute such a change of residence? A removal from one state into another, *with an intention of remaining*, constitutes a change of residence, and consequently of citizenship.² But a native citizen of one state never ceases to be a citizen thereof till he acquires a new citizenship elsewhere. Residence³ in a foreign country does not change his citizenship. Every citizen of a state is a citizen of the United States.⁴ A naturalized citizen, by a residence in any state in the Union, becomes a citizen of that state. So a citizen of a territory, by a residence in a state, acquires the character of the state where he resides.⁵

§ 344. But a naturalized citizen of the United States, or a citizen of a territory, does not become a citizen entitled to sue in the courts of the United States, by such

¹ 3 Story's Comm. 565. ² Id. ³ 1 Kent's Comm. Sect. 4.
⁴ 3 Story's Comm. 565. ⁵ Id. 566; 6 Peters' Supreme C. R. 761.

*residence in a territory, nor until he has acquired a residence in a particular state.*¹

§ 345. 5. *A corporation*, as such, is not a citizen of a state in the sense of the Constitution : but if all the members of the corporation are citizens, their character will confer jurisdiction.² A citizen may sue, who is trustee, executor, or administrator for another.

§ 346. Citizens of the same state may be parties, when they claim under *grants of different states*. This is the only case in which the Constitution gives jurisdiction directly to the Federal Courts, over cases between citizens of the same state. The reason is, that it contemplates a case in which the laws and boundaries of different states are brought into question, and upon which, therefore, the state tribunals are *not unbiased*.

§ 347. 6. "Foreign states, citizens, and subjects" may be parties. Who is a foreign citizen or subject ? or who is an alien ? Any person who is not a citizen of the United States is an alien. But when he is naturalized, he is no longer an alien ; for this is a case provided for by the Constitution and the laws : and it makes no difference whether he sues in his own name or as a trustee.

§ 348. A foreign corporation established in a foreign country, *all of whose members* are aliens, can sue in the same manner.

§ 349. The jurisdiction vests, however, only when one party to a suit is a citizen.³ *Alien enemies*, however, cannot sue ; their right is suspended until peace.

§ 350. *Jurisdiction* in relation to the subject matter *Original or Appellate*.

The court has original jurisdiction in all cases concerning ambassadors, public ministers, and consuls, and

¹ 1 Kent's Comm. 360 ; 1 Wheaton's R. 91. ² United States vs. Planter's Bank, 9 Wheaton, 410 ; 8 Wheaton, 668. ³ Story's Comm. 571.

those in which a *state* is the party ; in all others it has *appellate* jurisdiction, both as to law and fact, under such regulations and exceptions as Congress shall make. This jurisdiction cannot, by the words of the Constitution, be exercised without the intervention of Congress ; but Congress are bound by that part of the clause which refers to "all cases," to confer all the jurisdiction granted by the Constitution, in some form or other, upon the Supreme Court. By the act of September, 1789, this was done, and the Supreme Court have exercised their appropriate powers uninterruptedly since.

§ 351. This original jurisdiction is confined to the enumerated cases, and cannot be enlarged by Congress. Congress cannot give it appellate jurisdiction, when the Constitution has given it original, nor original where it has appellate jurisdiction.¹ The grant of original jurisdiction is exclusive, and negatives any enlargement.

§ 352. Whether the original jurisdiction vested in the Supreme Court may not be exercised concurrently by the inferior courts, is an undecided point.²

§ 353. Another question is, whether the court can exercise *appellate* jurisdiction in those cases where it has original jurisdiction ;³ and it is thought it can.

§ 354. What is appellate jurisdiction ? "The essential criterion of appellate jurisdiction is, that it revives and corrects the proceedings in a cause already instituted, and does not create that cause." The appellate jurisdiction may be exercised in a variety of *forms*,—indeed in any form which the Legislature may prescribe. But the substance must exist before the form can be applied. Where the object is to review a judicial proceeding, the mode is immaterial ; and a writ of habeas corpus, or mandamus, a writ of error, or an appeal may be used, as the Legislature may prescribe.⁴

¹ 3 Madison *vs.* Marbury, 1 Cranch, 137 ; 1 Kent's Comm. 302.
² 11 Wheaton, 467. ³ 3 Story's Comm. 576. ⁴ *Id.* ; 6 Wheaton's Rep. ; 2 Peters' Sup. C. R. 449 ; Ingersoll's Digest, 375.

§ 355. The most usual modes of exercising appellate jurisdiction are writs of error, appeals, or some process of removal.¹ An *appeal* removes the entire cause, fact, or will, or law for a *review* and new trial. A *writ of Error* removes nothing for re-examination but the *law*.

§ 356. The appellate jurisdiction of the Supreme Court extends to the decisions of the State Courts. By the act of September 1789, Sect. 25, it is declared that the final judgment or decree of the state courts may be re-examined and reversed, or affirmed in those cases in which is drawn in question the *validity* or *construction* of a *treaty*, and the decision is *against* the right, title, or privilege set up, or claimed under it; or where is drawn in question the validity of a *statute*, or an *authority* exercised under a *state*, on the ground of their being adverse to the Constitution, treaties, or laws of the United States, and the decision is in *favour* of their validity. Such cases may be brought up on writ of Error; and such writ has the same effect as if directed to the Circuit Court of the United States.

§ 357. Hence, if the highest court in a state reverse the judgment of a subordinate court, and, on appeal to the Supreme Court of the United States, the judgment of the highest court in a state be reversed, it becomes a *nullity*, and a mandate issues to the inferior court for execution.¹ The record in such cases must show the error, by showing some act of jurisdiction.

§ 358. Jurisdiction in respect to *locality*. Here we may consider, 1st, Within what boundaries the authority of the United States Courts is limited; 2d, The maritime and admiralty jurisdiction of the courts.

§ 359. 1. What are the territorial limits of jurisdiction? The limits of jurisdiction, as it respects the

¹ 3 Dallas, 342; 1 Wheaton, 304.

Supreme Court are the limits of the United States, for the decisions of all other courts, whether territorial, district, or state, are within the rules as to subject and parties already laid, and are subject to revision in that tribunal; except that, in the *Territorial Courts*, no appeal lies from their decisions without a *special statutory provision*. The territories are under the sole and absolute control of Congress.¹

§ 360. The district court has cognizance of crimes and offences, which are cognizable by the United States tribunals, and which are committed within the respective districts, or on the high seas.

§ 361. The District Courts have also admiralty and maritime jurisdiction on the *high seas*, and also within waters leading from them, and in which vessels of ten tons burden may navigate.²

§ 362. *The concurrent jurisdiction* of the state and national courts has also been a subject of some difficulty.

It is settled, that no part of the criminal jurisdiction of the United States can be delegated to state tribunals: and the admiralty and maritime jurisdiction is of the same exclusive cognizance. It can only be in those cases where, previous to the Constitution, state tribunals possessed jurisdiction independent of national authority, that they can now exercise a concurrent jurisdiction.³

§ 363. State courts may, in the exercise of their ordinary jurisdiction, incidentally take cognizance of cases arising under the Constitution, laws, and treaties of the United States: but the United States courts have appellate jurisdiction.

§ 364. Where the jurisdiction is concurrent, the *sentence* of either court, whether of conviction or acquittal, may be *pleaded in bar* of a prosecution before the

¹ 1 Kent's Comm. 360. ² Act of Sept. 1789. ³ 1 Kent's Comm. 372; 1 Wheaton, 304.

other. So also the judgment of a state court in a civil case of concurrent jurisdiction, may be pleaded in bar of an action for the same cause, instituted in a Circuit Court of the United States.¹

§ 365. The conclusion then is, that in judicial matters the concurrent jurisdiction of the state tribunals depends altogether upon the pleasure of Congress, and may be revoked and extinguished whenever they think proper, in every case in which the subject matter can constitutionally be made cognizable in the federal courts; and that, without an express provision to the contrary, the state courts will retain a concurrent jurisdiction in all cases where they had jurisdiction originally over the subject matter.²

§ 366. Various acts of Congress give jurisdiction to state courts and magistrates in both civil cases and for fines and forfeitures under the laws of the United States; but the *state* courts are not bound to assume jurisdiction in such cases.³

§ 367. It has been questioned whether the state courts could issue a *Habeas Corpus*, and exercise jurisdiction in a case where the imprisonment was by an officer of the United States, or under pretext of the authority of the United States. The state courts, however, have exercised such jurisdiction, although no final decision has been had upon the question.⁴

§ 368. No state court can issue an injunction upon any judgment in a court of the United States:⁵ nor can the state legislature annul the judgments, or destroy the rights acquired under them, or determine the extent of their jurisdiction.⁶ Nor can a state court, or authority, prescribe the rules or forms of proceedings, nor effect of process in the courts of the United States:⁷ nor issue

¹ 5 Wheaton, 1.

² 1 Kent's Comm. 374.

³ Idem. 375.

⁴ Idem; 10 Johnson's Rep. 328; 5 Hall's Law Journal, 82; 11 Mass. Reports, 68.

⁵ 3 Story's Comm. 624; 7 Cranch, 272.

⁶ 5 Cranch, 115.

⁷ 10 Wheaton, 21, 22, 51.

mandamus to an officer of the United States to compel him to perform duties devolved upon him by the laws of the United States.¹

§ 369. On the other hand, the national courts have authority (in cases not within the appellate jurisdiction of the United States), to issue injunctions upon judgments in the state courts; or in any manner to interfere with their jurisdiction and proceedings."²

§ 370. It is a question unsettled, whether the United States courts have a Common Law jurisdiction? In the case of the United States *vs.* Hudson & Goodwin,³ tried for a libel on the President, the Supreme Court decided, by a majority, that they had no Common Law jurisdiction. In the case of the United States *vs.* Coolidge,⁴ the Circuit Court for Massachusetts decided that they had such *jurisdiction in admiralty cases*. The Supreme Court, however, adhered to their former opinion. In consequence of this division, and the opinions of different commentators, this point is not wholly settled.⁵

§ 371. Another extensive subject of discussion in the courts of the United States, is the *admiralty* and *maritime* jurisdiction of the District Courts.

The *District Courts* act as courts of Common Law, and also as courts of admiralty. In England a difference existed between the *Instance* and *Prize Courts*. The former is defined⁶ to be the *ordinary* admiralty court, and the latter an *extraordinary* one, having jurisdiction only in time of *war*, and in *prize* cases. In the United States, however, the Supreme Court have determined that the District Courts have all the powers of courts of admiralty, whether as instance or prize courts.⁷

§ 372. Chancellor Kent, who has made law classical in our country, has given a brief review of the powers

¹ 6 Wheaton, 598.

² 3 Story's Commentaries, 626.

³ 7 Cranch, 32.

⁴ 1 Gallison, 188.

⁵ 1 Kent's Comm. 315.

⁶ Idem. 331.

⁷ 3 Dallas, 6.

of these courts, which may be stated in the following propositions.

1. *As to the jurisdiction of Prize Courts.* The prize jurisdiction extends to all captures in war made on the high seas. Prize goods are goods taken on the high seas by right of war, out of the hands of the enemy.¹ The prize jurisdiction also extends to captures in foreign ports and harbours, and to captures made on land by naval forces. It extends to captures made in rivers, ports, and harbours of the captors' own country. The prize court extends also to all ransom bills upon captures at sea, and to money received as ransom or commutation on a capitulation to naval forces.²

§ 373. If the prize be unwarrantably carried into a foreign port, and there delivered by the captors upon security, the prize court does not lose its jurisdiction over the capture and the questions incident to it. So, if the prize be lost at sea, or actually lying within a foreign neutral territory, the court has jurisdiction.³ Prize courts act upon the *thing* instead of the *person*, and that notwithstanding any contract between the parties.⁴ Prize courts have likewise exclusive jurisdiction and discretion as to the allowance of *freight, damages, expenses, and costs* in all cases of capture, and as to all *losses and personal injuries* connected with captures.⁵

2. *Criminal Jurisdiction of the Admiralty.* The Act of September, 1789, gives to the District Courts, exclusive of the State Courts, and concurrent with the Circuit Courts, jurisdiction over crimes and offences cognizable by the authority of the United States, and committed within their districts, or upon the high seas, where only a moderate corporal punishment, or fine, or imprisonment is to be inflicted. As this confers jurisdic-

¹ 1 Kent's Comm. 334.

² Idem. 335.

³ Idem. 336.

⁴ Id. 337.

⁵ Id.

tion only in *minor crimes*, it was a question whether the courts had any jurisdiction over cases of *murder, &c.* In the case of the United States against M'Gill,¹ it was decided they had not. The same was decided in *United States vs. Bevans*.² It is now settled, that the federal courts, as courts of admiralty, are to exercise such criminal jurisdiction as is conferred upon them expressly by acts of Congress, and they are not to exercise any other.³

This limitation, however, does not extend to private prosecutions in the District Court to recover damages for a *marine tort*.

§ 374. 3. *As to the division between the jurisdiction of the Admiralty and the courts of Common Law.*

On the sea-shore, the jurisdiction of the admiralty is limited to *low-water mark*,⁴ and between that and high-water mark, where the sea ebbs and flows, the common law and admiralty have a divided jurisdiction.

§ 375. In the Circuit Court of the United States it has also been decided, that the admiralty jurisdiction extends to all maritime contracts, torts, injuries, and offences on the *high seas*, and in *ports* and *havens*, as far as *the ebb and flow of the tide*.⁵

It has been asked what cases come within the meaning of admiralty, and what of common law jurisdiction? It is now settled that all seizures under laws of import, navigation, and trade, if made upon tide-waters navigable from sea, are civil cases of *admiralty jurisdiction*.⁶

§ 376. The admiralty and maritime jurisdiction of the District Courts is *exclusive*. The Constitution extends the judicial authority of the United States to *all* cases of admiralty jurisdiction, and the act of Congress enacts, that the District Courts shall have *exclusive* ori-

¹ 4 Dallas, 426.
mentaries, 341.

² 5 Wheaton, 76.
⁴ *Idem*. 343.

³ 1 Kent's Com-
⁵ 2 Gallison, 396.

⁶ 1 Kent's Comm. 349.

ginal cognizance of all civil causes of admiralty and maritime jurisdiction.

4. *Jurisdiction of the Instance Courts.*

§ 377. The Instance Courts take cognizance of crimes committed, and things done, and contracts not under seal, made on the bosom of the sea.¹ The cause must arise *wholly* upon the sea to be within the admiralty jurisdiction. If the act be done partly on land and partly on water, the Common Law has the preference.

§ 378. The admiralty has cognizance of maritime hypothecations² of vessels and goods in foreign ports, for repairs done, or necessary supplies furnished.

§ 379. If the admiralty has cognizance of the principal thing, it has also of the *incident*. Thus, goods taken by pirates and sold on land, may be recovered from the vendee by suit in admiralty.

The proceedings in admiralty are according to the course of the *civil law*, and are brief and simple.³

§ 380. "The Supreme Court shall have appellate jurisdiction both as to law and fact." This clause was, at first, supposed to confer the power of reviewing the *verdicts* of *juries* on matters of *fact*. This was not, however, the case. "The real object of the provision was to retain the power of reviewing the fact as well as the law in cases of admiralty and maritime jurisdiction."⁴ This subject is now settled conclusively by an amendment to the Constitution, in the following words:

"In suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by jury shall be otherwise re-examined in any court of the United States than according to the rules of the Common Law."

This at once prohibits the re-examination of facts already tried by jury in any other manner.

¹ 1 Kent's Comm. 352. ² Idem. ³ Idem. 354; 3 Story's Comm. 629. ⁴ 3 Peters's Rep. 446.

The only modes known to the Common Law to re-examine such facts are—1st. The granting a new trial by the court where the issue was tried, and 2d, by a Writ of Error, for an *error in law*, by some appellate court; neither of these includes the power of re-examining facts already tried by another court.

§ 381. The appellate jurisdiction is to be with such exceptions and regulations as “the Congress shall prescribe.” But here a question is asked, whether the jurisdiction attaches to the Supreme Court in its own nature, to be modified by Congress, or whether an act of Congress is necessary to confer that jurisdiction? If Congress have the power they may repeal it, and thus destroy the whole efficacy¹ of the court. It was formerly decided by the Supreme Court, that if Congress provided no rule to regulate their proceedings, they could exercise no jurisdiction. That decision has, however, been since overruled, and it is asserted by the Supreme Court, that without any limitation of powers by an act of Congress, it must possess all the jurisdiction which the Constitution assigns it. The appellate powers of the Supreme Court are given by the Constitution, and not by the judicial act.² But they are regulated and limited by that act.

§ 382. There are certain *incidental* powers which are attached to all courts without the necessity of an enactment.

The *functions* of the judges are strictly *judicial*. They cannot be called upon to advise the President, or to give extra-judicial opinions, or to act as commissioners, or other like matters.

Thus also the courts have power over their own officers, and the power to protect them and their members from being disturbed in the exercise of their functions. All courts have the power to *attach* for *contempts*, and by means of this they can protect themselves.

¹ 3 Story's Comm. 648.

² 6 Cranch, 307, 313.

§ 383. 3d clause. *The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed. But when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.*

§ 384. In connexion with this must be taken the amendments on the same subject, as follows :

Amendment 5th. *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment, or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.*

§ 385. Amendment 6th. *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed;*

§ 386. The right to a trial by jury is of very ancient date. It was firmly established, however, in the Magna Charta, granted at Runnymede.¹ In that instrument it is declared, that no freeman shall be injured in person or property except by the judgment of his peers, or the law of the land. From that time to this it has descended unimpaired through the governments of England and this country. It is esteemed, and correctly, the most precious right of freemen; for it enables them to appeal from the arbitrary judgments of either governments or individuals, to the disinterested verdicts of their equals. The term *peers* means equals,

¹ 3 Blackstone, 350.

and a judgment by *his peers* is one by *his equals*. The verdict, then, is given by those who are not only neighbours, but taken from the same rank and circumstances of life, and influenced by all the sentiments of justice or humanity which may be supposed to actuate persons placed in similar situations, and liable to the same contingencies.

§ 387. The *trial* of all crimes must also be in the *state* where it is committed. This is to avoid the difficulty, expense, and oppression which might happen from being carried into other states, and before foreign tribunals.¹

Before a person can be tried for a *crime*, he must first be charged by a *Grand Jury* with the offence. This charge is in the form of a *presentment*, or *indictment*. A Grand Jury is a number of men, not less than *twelve*, nor more than twenty-three, of whom twelve must agree in the charge, selected in the manner of other juries, from the body of the people within the *county* where they are summoned.² They are sworn to make diligent inquiry of all offences committed against the authority of the government and the peace of the state within the body of their county. In the United States Courts they are sworn to inquire and present all offences against the national government, and within its jurisdiction. When the grand jury are assembled, the proper officer, commonly the District Attorney for the state, lays before them all the offences of which he has any knowledge, and the evidence by which the charges against the prisoners are supported. They examine this carefully, and, if they find the testimony probable, and sufficient to induce a rational belief in the charges, they find what is called a *bill*, or an *indictment*, and indorse on it *A true bill*. This bill or indictment is a *formal charge* of the offence against the prisoner, usually drawn up by the

¹ 3 Story's Comm. 655.

² 4 Blackstone, 302.

attorney for the state. If the grand jury do not find the bill true, they indorse on it "*Not a true bill*," and the prisoner is discharged; but a new bill may be found by a new jury.¹ The indictment must charge person, time, place, and nature of the offence with clearness and certainty; otherwise it will be void for *uncertainty*.

§ 388. It is also provided, that no person shall be twice put in jeopardy of life or limb for the same offence. The meaning is, that no person shall be *twice tried* for the same offence: it is also added, that this can only be pleaded when there has been an actual verdict and judgment, and *not* when the jury have been dismissed for want of agreement, or a new trial granted.²

§ 389. No person can be compelled to be a witness against himself, or be deprived of life, liberty, or property, without process of law. This is merely an affirmation of the Common Law, as is also the former provision. In fact, nearly the whole of these amendments in relation to trial by juries, were *common law* privileges, but inserted, no doubt, for more absolute certainty, and that no doubt should ever be permitted to enter the minds, as to this subject, of either lawgivers or judicial expositors.

§ 390. One of these re-enactments of the Common Law is, that no *private property shall be taken for public use without just compensation*: yet plain justice as this is, it is frequently violated in this country by indirect means, and shows how difficult it is to preserve private rights when the *people at large* are interested against them: thus, private land is frequently taken for public works, streets, highways, canals, &c.; the owners are remunerated by an *appraised valuation*, not of what the property is *worth in itself*, but with the additional circumstance of its *increased value*, by an improvement

[¹ 3 Story's Comm. 658.

² Id. 659.

which the owner never derived, and in his judgment, is injurious to his interests. The plain rule of justice is to pay the *actual value*, without reference either to the increase or diminution of value in the residue.

§ 391. The trial by jury is public, in the presence of both the prisoner and the witnesses. The accused is entitled to compulsory process to obtain witnesses, and is also entitled to have counsel. This provision was inserted because by the ancient common law the prisoner had not that privilege, but acquired it by a statute of William and Mary.¹ Indeed, the criminal jurisprudence of England, previous to that time, was, except the trial by jury, conducted with the greatest disregard of justice. Neither had the prisoner the benefit of counsel, though, as the maxim ran, the judge is his counsel, and bound to see him have equal advantages with the accuser. This discreditable injustice on the part of the Common Law is, however, entirely done away by these provisions of the Constitution.

SECTION III.

§ 392. 1st clause. *Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.*

2d clause. *The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.*

Treason is some act whose object is the overthrow of the government: hence it is the highest crime against society, and universally regarded with odium and resentment. The definition of what is treason, and what is

¹ 3 Story's Comm. 663.

necessary to conviction, is of vast importance to the peace of society, and the liberty of the citizen. *Constructive* or implied treason, from suspicious circumstances, is dangerous wherever it exists. In the reign of Edward III. in England, a statute was passed declaring and defining treason and its different branches.¹ This was confirmed by the statute of Mary I. Our Constitution has used the very words of this statute, and thus adopted its definition, with the interpretation which it has received during several centuries. The war must be *actually levied* to constitute treason. A *conspiracy* to levy war is not treason.²

§ 393. The *punishment* of treason in our country is simply *death* by hanging; at the Common Law it was accompanied by many barbarities, which would not now be tolerated.

§ 394. By *corruption of blood* is meant the *destruction* of all *inheritable qualities*;—so that no one can claim any thing from a person *attainted*, or through him. A son could not claim from a grandfather, deriving title through a father that was *attainted*.³

§ 395. A state cannot take cognizance of or punish the crime of treason⁴ against the United States.

¹ Hawkins, p. 6, book I. chap. 1-7.

² 4 Cranch, 126.

³ 3 Story's Comm. 171.

⁴ Idem. 173.

ARTICLE IV.

MISCELLANEOUS.

SECTION I.

§ 396. *Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.*

§ 397. The laws and acts of foreign nations are not judicially taken notice of by other nations, but must be proved, like other facts, when they come under examination. The mode of proof varies in different countries. As to the effect to be given foreign judgments, all civilized nations are agreed they shall have some effect, but what, they are not agreed upon. In England and the United States, *foreign judgments* are what is called *prima facie* evidence of what they decide. This means that they shall be taken as true till the contrary is proved. A *domestic judgment*, however, is true *conclusively*, and cannot be contradicted.

§ 398. The *full faith and credit* mentioned in the Constitution was inserted to place the judgments of the different states upon a different footing from those of foreign nations. The latter were already *prima facie* evidence; the former then must be *conclusive*. They have absolute verity, so that they cannot be denied any more than in the state where they originated.¹ If a judgment is conclusive in the state where it is pronounced, it is conclusive everywhere; if re-examinable

¹ 3 Story's Comm. 180; 1 Peters' C. R. 74, 80

there, it is so elsewhere. It is placed upon the same ground as a *domestic judgment*.

SECTION II.

§ 399. 1st clause. *The citizens of each state shall be entitled to all privileges and immunities of citizens in the states.*

2d clause. *A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.*

3d clause. *No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered on claim of the party to whom such service or labour may be due.*

§ 400. The object of the first part of the clause is plain enough. If each citizen was not a citizen of the United States in other states, then the states would be completely *foreign* to each other, and their citizens *aliens* in each other. This clause makes each citizen of a state a *citizen of the United States*, and as such confers on him rights and privileges throughout the whole Union.

§ 401. The subject of delivering up *fugitives* from justice is one which among different nations has involved some doubts. In the United States, however, it is firmly fixed by the above provision, which requires them always to be given up to those who have a right to require it.

§ 402. The next clause, relative to persons *held to service or labour*, plainly refers to the slaves of the southern states who may take refuge in the non-slaveholding states. The *delivery*¹ in the case of fugitives and slaves is to be made, *not* after a *full trial*, which would manifestly defeat the end in view; but after a

¹ 3 Story's Comm. 677.

summary investigation before a magistrate, in which it shall appear *probable* that the circumstances charged are true. By an act of Congress, 1793, it is provided that such proof may be made before any magistrate, by the principal or his attorney, and may be either by affidavit or oral testimony to *his satisfaction*. The magistrate is then authorized to give a certificate of the facts to the party or his agent, which certificate is sufficient warrant of removal. Heavy penalties are laid on those who hinder or resist such proceedings, or harbour any of the fugitives or slaves.

SECTION III.

§ 403. 1st clause. *New states may be admitted by the Congress into this Union ; but no new state shall be formed or erected within the jurisdiction of any other state ; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the Legislatures of the states concerned, as well as of the Congress.*

2d clause. *The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory, and other property belonging to the United States ; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.*

§ 404. These two clauses are the foundations upon which Congress erect and administer the territorial governments, and subsequently admit them into the Union. Under the old confederation, no such provision existed ; and so little anticipation was had of the growth and prosperity of those wild regions whose population and territory have since nearly doubled the states, and more than quadrupled their strength, that no provision existed on the subject of forming or admitting new states. Since the adoption of the Constitution, however, eleven *new states* have been added to the Union, and three territories will soon still farther increase that number. The power given by the Constitution to do this is one of the

new principles introduced into our system, and is perhaps the most anomalous and most influential upon its future destiny of any. The *principle* is simply this, that a colony settled upon an adjacent territory, and within the jurisdiction of the United States, whether it be composed of citizens of the Union or emigrants from foreign nations, Europeans, or Asiatics, shall, on enumerating a specific population, be admitted to equal rights, privileges, and powers with the original states. This principle is likewise unlimited in respect to the number, distance, or settlement of the colonies. The consequence is, that the original states may ultimately, as they soon must, be left in a minority as to power in that government which they formed, and of which they were the sole possessors. They make the whole world partners with themselves in an inheritance of liberty and power and wealth. The grant thus made to the world of an asylum for all mankind is noble and benevolent, and the more so, as it seems to have had no former example among nations. It may be said, that the states thus added are not *foreign*: it is true they were not *conquered*, but they are just as subversive of the powers of the old states as if they had been taken from foreign countries. In the case of Louisiana, which was purchased, it was the accession of foreign territory; and at the time the Territory of Orleans was erected into a state, its inhabitants were almost wholly Spanish and French. In the same manner, the territory of Florida is an accession from a foreign country; and so also, should the government hereafter acquire any district or territory whatever, according to the existing laws, it would first become an organized territory of the United States, and then a state. No such policy as this was ever adopted by any other country, and it succeeds and could succeed only by that nice system of *balances* and *toleration*, by which one sect, or party, or state is constantly checked by others, and the elements of discord and opposition kept from any general union against the laws and the government.

§ 405. In respect to the formation of states and the territorial governments, the power was exercised by Congress before the Constitution was formed, and without any article in the confederation to authorize it. The whole of what was called the North-western Territory, ceded by Virginia to the United States, and out of which has been carved the states of Ohio, Indiana, Illinois, and the territory of Michigan,—was placed under a territorial government, and governed by the ordinance of 1787.¹ That ordinance was, in many respects, wisely drawn, and has had great, and not less certain because unseen influence, upon the prosperity and happiness of that immense and now populous district.²

§ 406. The articles of *compact* solemnly tendered to the people of the states about to be formed, and thus far accepted by them,—contained some remarkable provisions. Among these articles are,

1st, An agreement that said territory, and the states which may be formed therein, *shall for ever remain a part of this confederacy*, subject to the articles of confederation, and to *such alterations as may be made therein*. This part of the compact, as will be seen hereafter, has an important bearing upon the recently agitated question of *secession*.

2d. And it is further provided that there shall be *neither slavery nor involuntary servitude* in the said territory.

3d, And farther, that whenever any of the said territories shall contain sixty thousand free inhabitants, it shall be admitted into the Union upon an equal footing with the original states.

¹ Act of Congress, 1787.

² Note.—The North-west Territory, ceded by Virginia to the United States, and included within the ordinances of 1787, contained the states of Ohio, Indiana, Illinois, and the Territory of Michigan. They now contain more than 1,500,000 inhabitants, and have derived the whole vigour and spirit of their institutions, and the direction of their policy and views, from the ordinance above cited. How important and lasting are the acts of early legislators!

§ 407. The power of Congress over the public territory is *exclusive* and *universal*, except so far as they are restrained by stipulations in the cessions, or by the ordinance of 1787.¹ This is not the case, however, with merely *national property*, such as forts and arsenals, where the states have not ceded the jurisdiction: in such cases, the jurisdiction of the state continues; subject, however, to the just exercise of the proper powers of the national government.

§ 408. In the year 1820, upon the admission of the state of Missouri into the Union, a question was raised whether a clause *restricting* the admission of *slaves* into the state was constitutional. That question was not directly decided, but it was indirectly by the act passed,² which declared that, in all the territory north of lat. 36° 30', not included within the limits of Missouri, slavery and involuntary servitude should for ever be prohibited.

§ 409. The question may, however, be considered as settled long before by the enactment of the ordinance of 1787, under the confederation, and the subsequent adoption and continuance of its provisions under the Constitution.

§ 410. An objection involving the same principle was made to the compact between Virginia and Kentucky, but at once overruled by the Supreme Court.³

SECTION IV.

The United States shall guaranty to every state in this Union a Republican form of government, and shall protect each of them against invasion, and, on the application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

This clause was unanimously adopted by the convention, and seems essential to the well-being of the republic, because the *whole* republic could not exist, if

¹ 3 Story's Comm. 198.

² Act of Congress, March 6, 1820.

³ *Green vs. Biddle*, 8 Wheaton, 1, 87, 88.

a *different form* of government was allowed to exist in either one of the states. This clause is intended to prevent such a change either by a powerful faction, a rebellion, or any other cause.

ARTICLE V.

§ 411. *The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.*

§ 412. This article provides that amendments may be made to the Constitution, and also points out the manner of making them. From this two things follow:

1st. That amendments made in accordance with the provisions of this article, become of the same binding authority as if they had formed a part of the original instrument.

2d. That no amendment can be made except in the way here pointed out.

§ 413. There are three limitations to the power of making amendments:

1st. That the prohibition of Congress to pass any law prior to the year eighteen hundred and eight, forbidding the introduction of slaves, should not be removed.

2d. That the mode of levying a capitation or direct tax should not be changed so long as slave property could be increased by importation.

3d. That no state should be deprived, without its consent, of its equal representation in the Senate.

The first restriction was adopted as a matter of compromise, and to ensure, for a limited time, the continuance of a profitable traffic. The second necessarily grew out of the first; for it would obviously have been unjust to change the mode of laying taxes while the property exempted from taxation could have been increased at pleasure, by importation. The third restriction was intended to ensure to the lesser states an effective safeguard against encroachments from the larger; and being placed in the Constitution itself, it cannot be broken down.

ARTICLE VI.

§ 414. 1st Clause. *All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation.*

The obligations between a nation and private individuals remain the same, whatever changes the form of government may undergo.¹

§ 415. 2d Clause. *This Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties, made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the Constitution, or laws of any state to the contrary notwithstanding.*

§ 416. The necessity of this provision is obvious enough. If the Constitution were not the supreme law

¹ Federalist, 43.

f the land it would not be a *Constitution* ; it would be *nullity* : its *supremacy* makes a part of the instrument self ; yet it was necessary to declare it, in order that I might understand it, and no room be left for controversy. *Treaties* are *supreme* laws till repealed by the legislature of the nation : the Legislature has such power, though war may be the consequence of its exercise.¹ *Treaties* are compacts with foreign nations, and must be observed, or the national faith is violated.

§ 417. The *laws of the United States*, if made in pursuance of the Constitution, are as valid as the Constitution, and of course also the *supreme law*. To these provisions it is added, "*any thing in the Constitution, or laws of any state to the contrary notwithstanding.*" This clause gave no additional force to the foregoing provisions, but made them clearer to those who administer the laws. Another thing clearly appears from the whole clause, that the Constitution makes the *national government supreme over the state constitution and laws* in all cases in which they may come in conflict. As the Constitution is thus supreme, every court has the power to declare *unconstitutional laws void*, when properly before them.²

§ 418. 3d Clause. *The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by an oath, or affirmation, to support this Constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.*

§ 419. This *oath* is required in all civilized nations from the officers of government ; it is the most solemn obligation men can be placed under, and it is right to require it of them in a class of duties as im-

¹ 2 Cranch, 1 ; 3 Story's Comm. 695.

² 1 Kent's Com-

mentaries, 420.

portant as any that can be performed in a social state. It is to be remarked, that this oath is required of all *state*, as well as *national* officers; for the *agency* of state officers is required to carry on the national government, and they are accordingly required to give their obligations to perform it.

§ 420. In June, 1789, Congress passed an act¹ prescribing the time and manner of taking the oath or affirmation, as well by the officers of the several states as of the United States. Some doubts were entertained of its constitutionality, but it was approved, and no doubt is now had upon it.²

§ 421. The clause which enacts that *no religious test* shall ever be required for any office of trust or profit, is one of the most peculiar, as well as valuable parts of the Constitution. This is believed to be the only government in the world which permitted perfect *toleration*, and the experience of half a century has proved that it offers no hinderance to any, while it affords protection to all religious sects. While this exists, there can be no union of *Church and State*,—a union fatal to both, and disastrous to the welfare of the people. Yet Christianity flourishes and extends in the United States with the growth of the people, and the very emulation of the different sects contributes to the prosperity of the whole.

ARTICLE VII.

§ 422. *The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.*

At the formation of the Constitution, there were thirteen states; nine of these ratified it immediately, three

¹ Act 1st June, 1789.

² 4 Elliott's Debates, 139; 4 Wheaton's Rep. 415.

after the lapse of a few months, and the state of Rhode Island not till more than a year afterward. The instrument was, however, perfect by the ratification of nine, and if the others had not acceded, they would have stood in the relation to them of foreign nations. Since that period, eleven others have joined the union, and the whole form one great nation under a common government.

AMENDMENTS.

§ 423. Upon the adoption of the Constitution, strong objections were made to it on account of some supposed deficiencies. Among others, the want of a Bill of Rights was strongly urged, to which it was justly replied that the Constitution itself was a bill of rights. The people, in their conventions, however, finally thought best to accede to the Constitution, and urge upon Congress the proposal of several amendments. Accordingly the amendments we have already mentioned, those following, and some that were not adopted, were recommended by many of the states to Congress, and by Congress to the people.

AMENDMENT I.

§ 424. *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

The first clause was undoubtedly meant to prohibit Congress from interfering in any manner between different sects of Christianity, and not to encourage any other religion. For nearly all the old states had laws for the encouragement of religion; at the same time, Congress has no power to do the slightest positive act to sustain or prohibit any religion whatever. It is a

subject upon which they are forbidden to legislate. In this respect the United States Constitution is wholly unlike any other ever formed. It derives no aid from its connexion with religion, but leaves that to be settled by conscience and its God.

§ 425. The next clause is, that Congress shall make no law abridging the freedom of speech or of the press. What is the freedom of speech and of the press? It is the right to speak and publish every thing in relation to every subject, *which is not in derogation of private rights*. No one has a right to injure his neighbour: this is the first law of nature, and everywhere preserved in civil society; of consequence, no one has a right to speak or publish what will injure another; hence the law of *slander* and of *libel*. Within these limits it is not perceived that there is any restraint upon the liberty either of speech or of the press.

§ 426. The next clause is, the people shall have the right peaceably to assemble and petition for a redress of grievances. This seems to have been altogether a work of supererogation; for the right of the people to assemble, either to petition, or for any other purpose, arises necessarily from the form of government.

AMENDMENT II.

§ 427. *A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.*

The term *militia* is a Latin word, and signifies *the being a soldier*. In our country it is applied only to that species of soldiery which is composed wholly of enrolled citizens, held *ready* for service, but not actually under arms. It is scarcely necessary to say, that the *right* of the people thus to bear arms is the foundation of their liberties; for, without it, they would be without any power of resistance against the existing government.

AMENDMENT III.

§ 428. *No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.*

It was an easy mode of oppression, with arbitrary princes, to quarter soldiers upon the people, so that they ate out their substance and ill treated their families. It was to prevent the possibility of such scenes in this country that this provision was inserted in the Constitution.

AMENDMENT IV.

§ 429. *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

Special warrants, such as here described, are the only warrants upon which an arrest can be made according to the law of England.¹ This provision, therefore, was in affirmance of the Common Law, and introduced into the Constitution for more abundant caution.

§ 430. Amendments 5th, 6th, and 7th, in relation to the trial by jury, and the mode of indictment, we have already considered in connexion with another part of the Constitution.

AMENDMENT VIII.

§ 431. *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

Excessive bail, and cruel punishments, were another class of means used by arbitrary governments to oppress the people; hence the insertion of this amendment.

¹ 3 Burrows's Rep. 1743; 4 Blackstone's Comm. 291, 292.

It has been held that this clause applies only to punishments inflicted by the national government, and not to those inflicted by the states.¹

AMENDMENT IX.

§ 432. *The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.*

This was merely meant to prevent the application to the Constitution of a maxim, that the affirmation of certain things, in some cases, implies a denial of others.

AMENDMENT X.

§ 433. *The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.*

This provision follows of course, without express insertion, from the fact that the Constitution is an instrument of enumerated powers, and those not expressly given in it, or necessarily flowing from them, are retained by the *original source* of power, or invested in collateral and inferior governments. Now, what is this *source of power*? The *people*. It must be recollected, that both national and state governments are formed by, and derive their authority from, the people; hence, whatever powers they have not invested in the national government, must either be granted to the state governments or retained by themselves; therefore the words of the provision, "*reserved to the states respectively, or to the people.*"

§ 434. Amendment 11th, in relation to the judicial power, and 12th, in relation to the Presidential election, have been already considered.

¹ 3 Cowen's New-York Rep. 686; 3 Story's Comm. 751.

CONSTITUTION OF THE UNITED STATES.

Preamble.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Of the Legislature.

SECTION I.

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meet-

ing of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New-York, six; New-Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION III.

1. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments: when sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief-Justice shall preside; and no person shall be con-

victed without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

1. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION VI.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

SECTION VII.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States :

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :

6. To provide for the punishment of counterfeiting the securities and current coin of the United States :

7. To establish post-offices and post-roads :

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries :

9. To constitute tribunals inferior to the supreme court :

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

12. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :

13. To provide and maintain a navy :

14. To make rules for the government and regulation of the land and naval forces :

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions :

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress :

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square), as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States ; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings :—And,

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight ; but a tax or duty may be imposed on such importation not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the *census* or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any state.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION X.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No state shall, without the consent of the Congress, lay any duty of tonnage, keep troops or ships of war in time of peace; enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Of the Executive.

SECTION I.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows :

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress : but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed ; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President ; and if no person have a majority, then from the five highest on the list, the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote : A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]*

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

4. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President ; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President,

* This clause is annulled. See Amendments, Art. 12.

and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

6. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation :—

“I do solemnly swear (or affirm), that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.”

SECTION II.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States ; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur ; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law : but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION III.

1. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient ; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper ; he shall receive ambassadors and other public ministers ; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION IV.

1. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Of the Judiciary.

SECTION I.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ;—to all cases affecting ambassadors, other public ministers, and consuls ;—to all cases of admiralty and maritime jurisdiction ;—to controversies to which the United States shall be a party ;—to controversies between two or more states ;—between a state and citizens of another state ;—between citizens of different states ;—between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury ; and such trial shall be held in the state where the said crimes shall have been committed ; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

SECTION III.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

2. No person shall be convicted of treason unless on the tes-

timony of two witnesses to the same overt act, or on confession in open court.

3. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Miscellaneous.

SECTION I.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION III.

1. New states may be admitted by the Congress into this union : but no new state shall be formed or erected within the jurisdiction of any other state ; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress.

2. The Congress shall have power to dispose of and make needful rules and regulations respecting the territory or other property belonging to the United States ; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION IV.

1. The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion ; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

Of Amendments.

1. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

Miscellaneous.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

Of the Ratification.

1. The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON, *President,*
and Deputy from Virginia.

New-Hampshire—John Langdon, Nicholas Gilman. *Massachusetts*—Nathaniel Gorham, Rufus King. *Connecticut*—William S. Johnson, Roger Sherman. *New-York*—Alexander Hamilton. *New-Jersey*—William Livingston, David Brearley, William Paterson, Jonathan Dayton. *Pennsylvania*—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimmons, Jared Ingersol, James Wilson, Gouverneur Morris. *Delaware*—George Read, Gunning Bedford, jun., John Dickinson, Richard Bassett, Jacob Broom. *Maryland*—James M'Henry, Daniel of St. Thomas Jenifer, Daniel Carroll. *Virginia*—John Blair, James Madison, jun. *North Carolina*—William Blount, Richard Dobbs Spaight, Hugh Williamson. *South Carolina*—John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler. *Georgia*—William Few, Abraham Baldwin.

Attest :

WILLIAM JACKSON, *Secretary*. }

[*Congress at their first session under the Constitution, held in the city of New-York, in 1789, proposed to the legislatures of the several States twelve amendments, ten of which only were adopted. They are the first ten of the following amendments; and they were ratified by three-fourths, the constitutional number, of the States, on the 15th of December, 1791. The 11th amendment was proposed at the first session of the third Congress, and was declared in a message from the President of the United States to both Houses of Congress, dated the 8th of January, 1798, to have been adopted by the constitutional number of States. The 12th amendment, which was proposed at the first session of the eighth Congress, was adopted by the constitutional number of States in the year 1804, according to a public notice by the Secretary of State, dated the 25th of September, 1804.*]

AMENDMENTS

To the Constitution of the United States, ratified according to the Provisions of the Fifth Article of the foregoing Constitution.

ARTICLE I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Art. II. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Art. III. No soldier shall, in time of peace, be quartered in

any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

Art. IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Art. V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Art. VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

Art. VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Art. VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Art. IX. The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Art. X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Art. XI. The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Art. XII. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-

President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

[Note 1. Another amendment was proposed as article XIII. at the second session of the eleventh Congress, but not having been ratified by a sufficient number of the states, has not become valid, as a part of the Constitution of the United States. It is erroneously given as a part of the Constitution, in page 74, vol. I. Laws of the United States, published by Bioren & Duns, in 1815.]

[Note 2. The Constitution, as above printed, has been carefully compared with the copy in the Laws of the United States, published by authority, and also with one in the National Calendar for the year 1836, which was copied from the roll in the Department of State.]

[Note 3. The ratification of the Constitution by the state of New Hampshire, being the 9th in order, was laid before Congress on the 2d of July, 1788, and, with the ratifications of the other states, was referred to a committee, to report an act for carrying the new system into operation. An act for this purpose was reported on the 14th of the same month, and was passed on the 13th of the September following.]—*American Almanac*, 1831.

CHAPTER III.

THE RATIFICATION OF THE CONSTITUTION.

§ 435. We have now seen *what* the Constitution is, and in connexion with that, what *constructions* have been put upon its various clauses, and what *decisions* have been had under it by the *judicial authority*. It is important that we should now look at the *mode* in which it was ratified, and what *opinions* were declared by the *ratifying power*, as to what were the rights vested in the national government.

§ 436. When the *Convention* had formed the Constitution, they by *resolution*¹ directed it to be “laid before the United States in Congress assembled,” and declared their opinion that it should afterward “be submitted to a convention of delegates, chosen in each state by the *people* thereof, under a recommendation of its legislature, for their *assent* and *ratification* ;” and that each convention assenting thereto, and ratifying it, should notify Congress thereof.

§ 437. Accordingly, Congress having received *the report of the convention*,—²Resolved, that the report, resolutions, and letter accompanying them be transmitted to the several legislatures, to be by them submitted to a convention of delegates chosen in each state by the *people thereof*, in conformity to the resolve of the convention, &c. &c.

§ 438. Under this resolution of Congress, the *states* called *conventions* of the *people*, and the Constitution

¹ 4 Elliott's Debates, 248.

² Idem.

being submitted to them, was ratified successively by all of them, and the Constitution became the supreme law of the land.

ORDER AND MANNER OF RATIFICATION.

§ 439. 1st. ¹The first state which ratified the Constitution was Delaware, which did so on the 7th December, 1787,—without condition or the recommendation of an amendment.

§ 440. 2d. ²The second was Pennsylvania, which, in like manner, without any declaration or recommendation, ratified it on the 12th of December, 1787.

§ 441. 3d. The next was New-Jersey, which ratified on the 18th December, 1787, as is declared in their ratification, by the *unanimous* consent of all the members.

§ 442. 4th. ³The fourth was Connecticut, which likewise ratified without any declaration, on the 9th January, 1788.

§ 443. 5th. ⁴The next was Georgia, which ratified, without condition or resolution.

§ 444. 6th. The sixth was Massachusetts. In the convention of this state, there was much opposition⁵ to the Constitution, and at first a majority against it. In consequence of this, it was finally ratified with the *declaration* of the convention, that in their opinion, certain amendments and alterations were necessary to *remove the fears, and quiet the apprehensions* of many of the good people of that commonwealth.

The amendments recommended were as follows, viz;⁶

1. That⁷ it be declared that all powers not *expressly*

¹ Elliott's Debates, vol. 4, p. 207. ² Idem. 208. ³ Idem. 209. ⁴ Idem. 212. ⁵ 2 Pitkin's Civ. Hist., 266. ⁶ 4 Elliott's Debates, 211.

⁷ Note.—Whenever resolutions or other proceedings are given in this work, except in the case of the Constitution, they are set forth *substantially*.

delegated by the Constitution should be reserved to the several *states*, to be by them exercised.

2. That there should be one representative to each thirty thousand persons, until the whole number of persons amounted to two hundred.

3. That Congress should not exercise the power of making *regulations for electing members of Congress*, unless the states neglected to make such regulations, or made them subversive of a free and equal representation.

4. That Congress do not lay *direct taxes*, but when the funds arising from impost and excise are insufficient, nor then till they have first made a requisition on each of the states for their quota, and the states have neglected or refused to pay their proportion.

5. That Congress erect no company of merchants with exclusive advantages.

6. That no person be tried for a crime, or suffer an infamous punishment, or loss of life, except in the military or naval service, without indictment by a grand jury.

7. The United States Judiciary shall have no jurisdiction of causes between citizens of different states, unless the matter in dispute extend to \$3000, nor the judicial power extend to actions between citizens of different states when the matter is not of the value of \$1500.

§ 445. 8. In civil actions between citizens of different states, issues of fact at common law shall be tried by jury, if the parties request it.

9. Congress shall *not consent*, that any person holding an office of profit or trust under the United States shall receive any title or office from a king, prince, or foreign state.

§ 446. With the recommendation of these amendments, Massachusetts, after great opposition,¹ ratified the Constitution on the 7th of February, 1788.

¹ 4 Elliott's Debates, 212.

This declaration contained the substance of many of the resolutions offered by other states ; and we shall see, in the course of this chapter, the portion of them which was adopted.

§ 452. 11th. The eleventh state¹ adopting the Constitution was New-York. Their ratification was made on the 26th July, in the year 1788. It was accompanied by a long declaration of rights, and a series of proposed amendments.

In addition to the amendments already proposed by other states, there were the following :—

That Congress should not impose an *excise* on any article of the growth, production, or manufacture of the United States.

That no person should be eligible as President, Vice-President, or member of Congress, who was not a natural born citizen, or a citizen on the 4th of July, 1776, or held a commission under the United States during the war, and became citizens subsequently, and who shall be freeholders.

That to borrow money, or declare war, two-thirds of the senators and representatives present must concur.

That the privilege of Habeas Corpus shall not be suspended for a longer time than six months, or until twenty days after the meeting of the next Congress.

That the right of exclusive jurisdiction over ten miles square shall not exempt its citizens from paying the same taxes that other citizens do, nor privilege them from arrest for crimes committed, or debts contracted without the district.

That the right of exclusive jurisdiction over certain public places shall not authorize Congress to prevent the operation of the state laws in civil and criminal matters, except as to persons in the employ of the United States, nor as to them, in respect to crimes.

¹ 4 Elliott's Debates, 216.

That the compensation of members of Congress be fixed by standing laws, and no alteration operate for the benefit of members making it.

That the Journals of Congress shall be published at least once a year, except such parts as may require secrecy; that they shall keep their doors open; and that two members may require the *yays* and *nays*.

That no capitation tax shall be laid.

That no person shall be senator more than six years out of twelve; that the legislatures may recall their senators and elect others.

That no member of Congress shall, during the time for which he was elected, be appointed to any office under the United States.

That the power of Congress to pass bankrupt laws should only extend to merchants and traders, and that the states have power to pass other insolvent laws.

That no person be eligible as President a third time.

That the executive shall not grant *pardons* for *treason* without the *consent* of Congress, but may *reprieve* them till heard by Congress.

That the President, or person acting as such, shall not command the army in the field unless by desire of Congress.

That all letters patent, commissions, writs, &c., should run in the name of "the People of the United States," and be tested in the name of the President of the United States, or the first judge of the court out of which process shall issue.

That Congress should constitute no inferior tribunals with *appellate* power, except such as are necessary for admiralty and maritime jurisdiction, and in other cases where the jurisdiction is not original, causes shall be tried by the state courts, with a right of appeal to the Supreme Court.

That the court for the trial of impeachments shall

consist of the Senate, the Judges of the Supreme Court, and the chief judge of the highest court in each state.

That no judge of the Supreme Court shall hold any other office under the government of the United States, or any of them.

That the militia shall not be compelled to serve out of the state for more than six weeks, without the consent of the legislature.

None of these propositions were adopted, but taken in connexion with the amendments proposed by other states, they show what construction was, at the time, placed upon some of the most important clauses of the Constitution.

§ 453. 12th. ¹The twelfth state which ratified the Constitution was North Carolina, on the 21st of November, 1789. In this state, also, there was great opposition, and a resolution was passed, declaring that a bill of rights should be annexed to the Constitution, and several amendments adopted.

§ 454. The ratification of New-Hampshire, the *ninth* in order was received by Congress on the 2d of July, 1788. They then appointed a committee to report an act to put the Constitution into operation. Under that act the Constitution went into operation on the 4th of March, 1789. It has been seen that North Carolina did not ratify till November, so that the first election of President was made by *eleven states*.

§ 455. Rhode Island was not represented in the Convention, and did not ratify the Constitution till the 29th of May, 1790,² more than a year after it had gone into practical operation. The ratification was accompanied by a Declaration of Rights, and the recommendation of many amendments. They recommended nearly all the

¹ 4 Elliott's Debates, 221.

² Idem. 225.

alterations proposed by other states, and the following additional ones ;—

That the judicial power of the United States, in which a state is a party, shall not extend to *criminal* prosecutions, nor to authorize any suit, by any person, against a state.

That no amendment shall take effect without the consent of eleven states.

That no person shall be compelled to do military duty without voluntary enlistment.

That no standing army be kept in time of peace.

These alterations were not adopted, except the one in relation to suits by individuals against a state, which is imbodyed in the eleventh amendment to the Constitution.

§ 456. The Constitution, after its formation, was addressed to the President of Congress, and accompanied by a letter from General Washington, President of the Convention,—from which the following extracts are taken.

The letter shows, in a remarkable manner, in what light the Constitution was then viewed, and what were the objects of its formation. They were very different from the fanciful constructions which metaphysical politicians have since been disposed to put upon it.

§ 457. *It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interests and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend, as well on situation and circumstance as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and, on the present occasion, this difficulty was increased by a*

¹ 4 Elliott's Debates, 249.

difference among the several states as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of the Union, in which is involved our prosperity, felicity, safety,—perhaps our national existence. This important consideration, seriously and deeply impressed upon our minds, led each State in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected; a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

§ 458. The spirit in which our Constitution was formed, and the great object to be obtained by it, were very different from the spirit and objects entertained by some modern politicians. *Then the consolidation of our union was the great end, to which all other objects were pronounced, by Washington and his fellow-statesmen, of inferior magnitude. Now, consolidation, whether of the union, of law, or of government, is the great object of fear and danger to a class of men who either think or assert themselves to be the purest of patriots!*

§ 459. At the first session of the first Congress, the Senate and House of Representatives, two-thirds concurring, recommended to the states the adoption of twelve amendments to the Constitution, comprising chiefly those parts of the recommendations of the states which we have already noticed as having been adopted. Ten of these amendments were adopted¹ by three-fourths of the legislatures of the states, and became a part of the Constitution. Subsequently, three other amendments were added.

§ 460. On the 10th of January, 1791, *Vermont*, the first of the new states, joined the union, and gave its

¹ 4 Elliott's Debates, 227.

assent to the Constitution. Since then the Constitution has been adopted, assented to, and ratified by ten new states, who have become integral parts of the great whole, and, as we shall hereafter see, *indissolubly* connected by the union. In this manner the Constitution was ratified, and received its binding force from *the people* in the several states, not from the state governments.

§ 461. The language of the ratifications is remarkably uniform, and remarkably *explicit*, as to the source whence the Constitution receives its authority and force.

All the ratifications commence with, We, the delegates of *the people thereof*; and all terminate by making the ratifications in the name of *their constituents, the people*.

It is plain throughout, that some other *binding force* was thought necessary than mere state authorities. The *people*,—common constituents, it is true, of both state and national governments,—were everywhere summoned, in their *original* and *sovereign* capacity, to give authority to that union and constitution, which was not a compact among *state governments* but among the *people*, who are equally *sovereign* over both national and state governments, and upon whom the Constitution acts *directly* and *personally*.

§ 462. Among the constructions given to the Constitution at the time, in the declarations of the states ratifying it, may be remarked the following fact,—that *Massachusetts* explicitly declared, that the *rights* not *expressly granted* were reserved to the *states*,—and *Virginia*, on the other hand, as explicitly held, that all powers of the Constitution were derived from *the people of the United States*, and those not granted were reserved to *them*. These states have now exactly reversed their positions, and exhibit a new evidence of the instability of human opinion. Indeed, to those who love truth more than argument, all the metaphysical

subtleties of the profoundest philosopher would weigh little, in construing the constitution, against such *facts* as the Letter of Washington, the ratifications of the states, the debates of the Convention, and the declared object of all the statesmen who participated in the acts and doings of that day.

CHAPTER IV.

THEORY OF THE STATE GOVERNMENTS.

§ 463. By article 4th, Section 4th, of the United States Constitution, the United States *guarantees to every state in the Union a republican form of government*. Most of the colonies had charters previous to the Revolution, especially the New-England States, which conceded to them all the rights of self-government; but after the Declaration of Independence, and at the close of the war, nearly all of them formed Constitutions for themselves. Rhode Island alone still continues under her ancient charter. The new states formed their Constitutions as they were admitted into the Union.

§ 464. These constitutions are all formed upon the *same principles* with each other, and with the Constitution of the United States. They all observe the same division of the government into the three parts of Executive, Legislative, and Judicial. They all adopt the *representative principle*, and are all *republican*. One-half of them are accompanied with *declarations of right*, —a measure of *superabundant caution*; for, the *evils* which they are generally intended to operate against could not take place if the State Constitutions had no existence; as the Constitution of the United States effectually prohibits them.

§ 465. The *order of time* in which the state Constitutions were *formed*, is as follows, viz:

1. ¹Rhode Island has no Constitution, but is governed by a charter from Charles II., which concedes to the

¹ American Constitutions.

governor and company all the powers executive, legislative, and judicial. The governor and legislature are chosen by the people, and they appoint the officers.

2. The first Constitution formed among the states was that of New-Jersey, which was ratified by the Provincial Congress, July 2d, 1776. As this was before the Declaration of Independence, it was provided that if a reconciliation took place with Great Britain, then that instrument was to be null and void.

3. The next Constitution was that of Maryland, which was formed on the 14th of August, 1776.

4. The Constitution of North Carolina was formed December 18th, 1776.

5. Massachusetts assumed her form of government March 2d, 1780.

6. The next was South Carolina, which adopted her Constitution on the 3d of June, 1790.

7. The next Pennsylvania, on the 2d of Sept., 1790.

8. The next New-Hampshire, in February, 1792.

9. Vermont, July 9th, 1793.

10. Tennessee, February 6th, 1796.

11. Georgia, May 30th, 1798.

12. Kentucky, 17th of August, 1799.

13. Ohio, November 1st, 1802.

14. Louisiana, January 28th, 1812.

15. Indiana, June 29th, 1816.

16. Mississippi, 15th of August, 1817.

17. Illinois, on the 26th of August, 1818.

18. Connecticut, on the 15th September, 1818. Connecticut had until this time lived, like Rhode Island, under the charter of Charles II.

19. Alabama, on the 2d of August, 1819.

20. Maine, which had previously constituted a part of Massachusetts, adopted her Constitution on October 29th, 1819.

21. Missouri, on the 19th of July, 1820.

22. New-York had a Constitution previously, but her

present one was formed and adopted 10th of November, 1821.

23. Virginia also had a Constitution ever since the Revolution; but she formed a new one, 14th January, 1830.

24. Delaware adopted her present Constitution 2d December, 1831.

§ 466. As all these are similar to each other, and nearly in form the same with the Constitution of the United States, it will be unnecessary for the purpose of instruction, to consider more than *one of them*, and then point out the *differences* between that and the others. For this purpose we shall select the Constitution of New-York, which will be found interesting, on account of its being formed at so late a period, the peculiar talent displayed in the convention which formed it, and the elaborate structure of its judiciary.

CONSTITUTION OF NEW-YORK.

§ 467. In considering this instrument, we shall merely give an *outline of its principles*, without entering into details.

§ 468. By the Constitution of New-York, power is vested in three branches,—the *Legislative*, the *Executive*, and the *Judicial*.

By the 1st Article of the Constitution, *legislative power* is vested in a *Senate* and an *Assembly*. The Senate consists of *thirty-two* members, who are *freeholders*, and chosen for *four years*; the Assembly, of 128 members, annually elected. Senators are chosen by *districts*, the state being divided into eight; Representatives by *counties*. A *majority* of each house constitutes a quorum. Each house determines the rules of its proceedings,—the qualifications of its members,—chooses its own officers, except that the lieutenant-governor, when present, is President of the Senate,—each house keeps a journal of its proceedings, and publishes the same, except when secrecy is required. Bills may originate

in either house. Every bill which passes the two houses must be presented to the governor for his signature ; if he object, he may return it, with his objections ; if two-thirds of both houses re-enact it, it becomes a law without the governor's consent ; if a bill is not returned within ten days, Sundays excepted, after it shall have been presented, it becomes a law. Officers elected during good behaviour may be removed by joint resolution of the two houses, two-thirds of the Assembly concurring, and a majority of the Senate. The Legislature meets every year.

§ 469. By Article 2d, every male citizen of the age of twenty-one years, who was a resident of the state a year previous to any election, and for the last six months a resident of the town or county where he may offer his vote, and shall have within the year next preceding the election paid a *tax* to the state, or county, assessed upon real or personal property, or shall by law be *exempt* from taxation, or shall have performed *militia duty* properly equipped, or shall be *exempt* by being a *fireman* ; also every male citizen, who shall have been for *three years* next preceding such elections an inhabitant of the state, and the last year a resident of the town or county where he offers his vote, and shall for the last year have been assessed to *work* on the *public highway*, and shall have performed the labour or paid an equivalent therefor, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be elective by the people ; no man of *colour* can vote unless he has been three years a citizen, and for one year shall have been seized and possessed of a *freehold* of the value of \$250 over all incumbrances, and shall have paid a tax on it. And no person of *colour* is subject to direct taxation without he is so possessed. Since the adoption of the Constitution the right of suffrage has been extended by an amendment, and is now nearly universal for citizens over twenty-one years of age.

Persons may be excluded who have been convicted of infamous crimes.

All elections are by ballot.

§ 470. By Article 3d, the *executive* power is vested in a governor, elected for two years; a lieutenant-governor is also elected for the same time.

The *qualifications* for governor are,—to be a *freeholder*, 30 years of age, and five years a resident of the state, unless absent on public business of the United States. Governor and lieutenant-governor are elected at the same time and place as members of the Legislature,—are elected by the *highest number* of votes:—if receiving an *equal number*, by the Legislature."

The governor is commander in chief of the militia and admiral of the navy;—convenes the Legislature on extraordinary occasions; communicates to the Legislature the condition of the state, and recommends such things as he thinks proper; transacts all necessary business with the officers of government, expedites measures resolved upon by the Legislature, and sees the laws faithfully executed. He has power to grant reprieves and pardons, except for treason and cases of impeachment. In case of the death, removal, impeachment, &c. of the governor, the lieutenant-governor shall perform his duties.

The lieutenant-governor is President of the Senate, and has a casting vote therein; in case of his performing the duties of governor, by resignation, death, &c. the President of the Senate for the time being is lieutenant-governor; and in case of vacancy of both governor and lieutenant-governor, the President of the Senate acts as governor.

§ 471. Article 4th contains the *appointing power*. The governor *nominates*, and with the *consent* of the Senate, *appoints* the following officers, viz.: all major-generals, brigade inspectors, and chiefs of the staff, among the militia, except the commissary-general and adjutant-general, of whom the latter is appointed by the governor

alone ; all judicial officers except justices of the peace ; masters and examiners in Chancery.

The *Legislature* nominates, and on joint ballot elects the following officers, viz. : The secretary of state, comptroller, treasurer, attorney-general, surveyor-general, and commissary-general.

Captains and subalterns of militia are chosen by the privates and non-commissioned officers. Field officers of regiments and battalions by the respective officers of their regiments. Brigadiers by the officers of their brigade.

Clerks of courts, except county clerks, are chosen by their respective courts.

Mayors of cities are chosen annually by the common councils, except in the city of New-York, where, by an amendment of the Constitution, the mayor is chosen by the people.

Registers and assistant-registers are appointed by the chancellor.

Clerk and other officers for the Court of Oyer and Terminer in New-York, are appointed by the Court of General Sessions.

Justices and assistant-justices in New-York are appointed by the Common Council.

All other officers are elected by the people.

§ 472. Article 5th concerns the *judiciary*. There is a court of *Chancery*, over which presides the *chancellor* : a *Supreme Court*, consisting of a chief justice and two justices, any two of whom may hold a court : a Circuit Court, consisting of a single judge for each circuit, with the powers of a supreme judge at chambers, and with criminal jurisdiction, and such equity jurisdiction as the *Legislature* may confer, subject to the appellate jurisdiction of the chancellor : a County Court, consisting of a chief judge and assistants ; recorders in cities having judicial functions.

The chancellor and justices of the Supreme Court can only hold their offices till they are sixty years of age.

The court for the final correction of errors, and the trial of impeachments, consists of the President of the Senate, the senators, the chancellor, and the justices of the Supreme Court, or a majority of them. The chancellor and the justices, when a writ of error is brought for decisions by them, inform the court of the reasons thereof.

§ 473. By Article 6th, members of the Legislature, and all officers except such inferior officers as may be exempted by law, are required to take an oath to support the Constitution of the United States, and of the State of New-York:—and no other oath or test is required as a qualification for any office.

§ 474. Article 7th contains many miscellaneous provisions, most of them confirmatory of rights already established by the Constitution of the United States; such as the trial by jury, the free enjoyment of religious worship, the privilege of the writ of Habeas Corpus; presentment and indictment in criminal cases by a grand jury; and the liberty of the press; it is also provided that no minister of the Gospel shall be eligible to any civil or military office; also, that the concurrence of two-thirds of each branch of the Legislature is necessary to the appropriation of money to local or private purposes, and to create corporate bodies.

The Common Law in existence in 1775 is adopted and continued in force.

§ 475. Article 8th provides for the amendments. Article 9th appoints the time of its going into operation, and the mode by which the new constitution shall be carried into effect.¹

§ 476. These are, in substance, the leading provisions of the Constitution of New-York, and are, as will readily be perceived, very analogous to those of the Constitution

¹ American Constitutions.

of the United States. Indeed the latter has in a great measure been the model for all the state constitutions formed since its own adoption; and that again was formed on the best parts of the English constitution, modified and amended by the circumstance of many states united into one, the more liberal ideas of religious freedom, and personal rights, which had grown up and for many generations existed among the Colonial Institutions.

§ 477. By a comparison of this constitution with that of the United States it will be seen;

1st. That like that of the United States, *power* is divided into the *three* departments of *legislative*, *executive*, and *judicial*.

§ 478. 2d, That the legislative department is likewise divided into *two branches*,—the *Senate* and the House of Assembly;—the former elected by larger bodies, and for a longer time; the latter more popular in its character.

§ 479. 3d, That like the Congress, they decide on the qualifications of their own members, and determine the rules of their own proceeding.

§ 480. 4th, Every bill, like the laws of Congress, requires the signature of the executive chief to become a law, and he may put his *negative* upon it, and unless subsequently passed by two-thirds may reject it.

§ 481. 5th, The executive, like the President, is chief of such military and naval force as the state may employ. He also has the nomination, and in conjunction with the Senate, the appointment of many important officers. Like the President, he makes recommendations to the legislative body, and takes care that the laws be executed. Like him, he may be impeached, and removed.

§ 482. 6th, The judiciary, in respect to the Supreme Court and Circuit Courts, are alike, and so also are many other miscellaneous provisions.

§ 483. But, while there is this similitude in the *forms* of the constitutions, there is a wide difference in their *powers* and *objects*. The Constitution of the United States being *national*, regards *national* objects, and is vested with *powers chiefly external*,—while the state constitutions being *subordinate* and *local*, act almost wholly upon *municipal* and *internal affairs*.

§ 484. What then is the object and extent of State Legislation? The Constitution of the United States defines the *powers* and *action* of the state governments, by the joint action of two principles contained within itself. 1st, By the *delegation* of certain *rights* and *powers* to the United States government, upon which the states cannot trench; and 2dly, By the express *prohibition* of certain other powers to the states. This is the limit imposed by the government of the *whole* upon the government of the *parts*. The *residuary power*, whatever it may be, is expressly *reserved to the states, or to the people*. The powers retained by the people are those great *natural rights* which they have granted to neither state nor national governments; among these are the rights of personal liberty and private worship, and the great right of reforming and amending the government, or abrogating it entirely when they find it oppressive. This is the *fundamental right of revolution*, and should never be confounded with *rights* arising *under the government*. The former is the original right of the people to *constitute* their own government, and of course to overturn it: the latter is subordinate to that government, and cannot be exercised in *opposition to it*.

§ 485. The powers of the state governments, then, are all that great *body of authority* which the Constitution of the United States does not directly or indirectly *prohibit to the states, and the people have not themselves retained*.

§ 486. Without entering into details, we may briefly

¹ 10th Amendment to the Constitution of the United States.

notice *some of the most important powers possessed by the states.*

1st. The Constitution of the United States, while directing that a *representative* body should be chosen, left the *regulation* of the *elective franchise* to the states; for it ¹directs that the "electors" shall have the same qualifications as *electors for the most numerous branch of the Legislatures*. Each state then, in regulating the elective franchise for itself, also regulates that of the government of the Union, and may make it as enlarged or as restricted as it pleases.

§ 487. 2d. Another power possessed by the states,² is that of partaking in the formation of the national senate. Though this would seem to place the existence of the Senate in the power of the states, yet such is not the fact; for the ³Constitution in another provision gives Congress the power to *make and alter regulations as to times and manner of choosing senators*; if, then, Congress make such regulations, and the states do not choose their senators at that time and in that mode, they will act unconstitutionally, and place themselves in the wrong.

§ 488. 3d. Another power possessed by the states,⁴ is contained in the mode of choosing the President. The *states* appoint in such manner as the legislatures direct the electors; but in this case, as in that of senators, the power to act or not act is not left with the states. By another clause,⁵ *Congress* appoints the *time* of choosing electors, and the day of giving their votes.

§ 489. 4th. The next and greatest authority vested in the states is the enactment of the whole body of *local and municipal laws*, and the enforcement of them by a proper organization of judicial courts. The Constitution of the United States has vested in the national government all the powers which are supreme and

¹ Art. 1, Sect. 2, United States Constitution. ² Idem. Sect. 3.

³ Idem. Sect. 4. ⁴ Art. 2, Sect. 2, Constitution United States.

⁵ Idem. Sect. 4.

national,—and all the powers *necessary* and *proper* to carry these into effect; but among these enumerated powers, and among those necessary to carry them into effect, are not found any of the *municipal* and local laws, which concern the rights of person and property; hence these are among the powers of the states, and they constitute the large mass of objects upon which the local legislatures occupy themselves.

This class of laws are those which most intimately concern the happiness and prosperity of the people. The citizen can well understand this when he reflects that an act of incorporation by the Legislature, or the location of a canal near his farm, may double his property, or a series of unwise enactments destroy the peace of society, or paralyze its industry, when the distant war, upon which the *nation* is engaged, is unfelt and scarcely known.

§ 490. The laws which result from the authority of state legislatures may be divided into *four classes*. 1st, Those which concern *private property and rights*: This is composed of the body of the Common Law, and such acts of the Legislature as either confirm, alter, or abrogate it, with such other enactments as add or substitute new provisions. Thus the Common Law directs that the lands of the ancestor shall descend to the heirs, in a certain order. The statute of the Legislature, that certain alterations shall take place in this mode of descent. The Common Law and the statutory alteration then constitute the law of descent, and to regulate and alter it is one of the powers of the states.

§ 491. 2d. Another class of laws, upon which the state legislatures act, and which occupies much of their time, are those relating to *corporate and public bodies*; for example, laws incorporating turnpike, bridge, and stock companies,—chartering cities, farms, banks, and charitable and literary institutions.

§ 492. 3d. A third class of subjects upon which the legislatures of the states act, is *public property, public*

works, and public institutions; of this sort are public buildings, lands &c., state canals, rail-roads and improvements,—the provision for common schools, benevolent institutions, and whatever else is of a public and general nature.

§ 493. 4th. Another subject of legislative action is the *punishment of crimes*. The mode of conviction, the nature of the crime, the mode of punishment, and the support of criminals, all come within the jurisdiction of the states, except those crimes committed against the United States, and those committed on the high seas.

§ 494. 5th. These several classes constitute the mass of the municipal and local legislation, with which the states are charged. But there are still other powers committed to their care. Of these, one of them is the power of officering the *militia*, and governing them when not called into service. Here it must be observed, however, that Congress, by the Constitution, have the power of *organizing, arming, and disciplining the militia*; and, when called into *actual service*, the President or the United States officers *command* them; hence, when Congress choose to exercise this power, the whole system of *State Militia Laws* will be abrogated.

§ 495. 6th. Another power vested in the states is their co-operation in the *amendment* of the Constitution. Three-fourths of the states must assent to every amendment.

§ 496. Having considered the *constitution* of the state of *New-York* separately, and the *general powers* vested in all the states, it is only necessary farther to see in what respects, if any, the constitutions of the other states differ from that of *New-York*.

§ 497. In all the great divisions of the constitutions, the states all agree; Thus,

1. The government is in all of them expressly divided into the three divisions, Legislative, Executive, and Judicial.

2. The Legislative department is in all of them divided

into *two branches*,—the Senate and the Assembly, except only Vermont,—in which, however, there is an executive council, occupying a middle station between the executive and the legislative.

3. The executive is in every state the same, viz., a governor. In some states, as in Vermont, New-Hampshire, and Maryland, the executive power is divided between the governor and a council. In these cases, the council share with him chiefly in the appointing power; but in every state the chief magistrate is the governor.

4. The states all agree in the leading feature of the judiciary; they all have a *Supreme Court*, with inferior courts of Common Law, from which lies an appeal to the Supreme Court. In respect to Chancery, Probate, and Criminal Courts, they differ.

§ 498. In considering the *differences* between the state constitutions,—the first and greatest is in respect to the *right of suffrage*. Here, we have before observed, the states have a controlling influence over the national representatives; for, by restricting the qualifications of electors, they may make the Congress *entirely aristocratic*. Such, however, is not the tendency of our institutions; all the amendments in the state constitutions, made since the Revolution, have enlarged the right of suffrage, so that, in most of the states, it is *substantially universal*. Still there are great differences in this respect between some of the old and the new constitutions.

§ 499. 1. In the State of New-Hampshire, the right of suffrage is vested in “every male inhabitant of 21 years of age, except paupers, and persons excused from paying taxes by their own request.” This is the nearest universal suffrage granted by any state in the Union. In fact, it is so to all whites of age.

2. In Maine, the right of suffrage is the same, except the addition of three months’ residence.

2. In Illinois, the qualification is six months' residence in the state.

In Tennessee, six months' residence in any county.

4. In the States of Indiana, Vermont, and North Carolina, the qualification is a year's residence in the state,—except that in Vermont, it is required the voter should be of quiet and peaceable behaviour; and in North Carolina, a higher qualification is required for the Senate.

5. Georgia, Alabama, and Missouri require one year's residence in the state, and three months within the county.

6. In Rhode Island, the charter gives the right of suffrage simply to the *freemen*.

7. In Connecticut, the qualification is six months' residence, and militia duty or exemption from it; or a state tax and moral character.

8. New-Jersey,—one year's residence and state tax.

9. Maryland, Massachusetts, New-York, and Mississippi require one year's residence in the state, and six months within the county or town. In Massachusetts, it is also required to have paid a tax, or been exempt by law.

10. Ohio and Louisiana require one year's residence and a tax; in Louisiana, the tax must have been paid within six months.

11. Pennsylvania, Delaware, and South Carolina require two years' residence and a state tax.

12. Kentucky requires a residence within the state of two years, and within the county of one.

13. Virginia requires, 1st, a *freehold* of the value of \$25, or an interest in one equivalent to it; or, 2d, a reversionary interest of \$50 in value; or, 3d, a leasehold estate of the annual value of \$200, or to have been a householder for twelve months, and to have been assessed, and paid a state tax.

§ 500. In most of the states, the qualifications are as

low that the right of suffrage, in reality, is universal among all whites above twenty-one years of age. In some of the states, as New-York, free coloured persons vote.

§ 501. The next point upon which there are differences among the states is in relation to the judiciary. We have already seen that, in the great feature of a Supreme Court and inferior courts, they all agree. In respect to other courts, there is a variance.

§ 502. Thus, the states of New-York, New-Jersey, Delaware, Maryland, Virginia, South Carolina, and Mississippi have *Courts of Chancery*: in all the rest, Chancery powers are vested in the courts of Common Law.

§ 503. Many of the states, as Massachusetts and Connecticut, have *Courts of Probate*; in others, as New-York, the probate duties are performed by the *Surrogate*, an officer appointed for that purpose; in others, as Ohio, the duties of a Court of Probate are attached to the Court of Common Pleas. In Louisiana, the *parish judge* performs these duties.

§ 504. These are the chief points upon which the state governments differ. In all, however, there is the same form, and the same principles lie at the foundations.

§ 505. In the institutions and codes of *law* adopted and enacted in the different states for the government of society, there is some difference. In most of the states, especially the old ones, the *Common Law*, as existing prior to the *Revolution*, has been entirely adopted. In those states, the courts have common law jurisdiction, as well of *crimes* and *offences* as in civil suits. There the Common Law, the statutes of the Legislature, such particular customs as are acknowledged by the courts, and the laws of the United States, make up the body of laws in force. In other states, as Ohio and several of the new states, the Common Law is adopted only, so

far as is consistent with the usages and condition of the people; how far it is so, is adjudged by the courts. Here criminal offences at Common Law do not exist. There are no crimes or misdemeanours but such as are found on the statute book. In Connecticut or New-York, a person may be indicted for keeping a *nuisance*, and many similar misdemeanours, while in Ohio he cannot be, because the statute has not made such acts *criminal*.

§ 506. In Louisiana, the *Civil* Law prevails; the Common Law is not adopted there.

There are some other minor differences in the government and laws of the several states, but these are the chief.

CHAPTER V.

THE NATURE, PRINCIPLES, AND RELATIONS OF THE GENERAL AND STATE GOVERNMENTS.

§ 507. We have already examined, step by step, the provisions of the Constitution, and the constructions which have been placed upon doubtful points by the tribunals and constituted authorities of the country; but every government is of a certain *nature* dependent upon the forms of its administration; and every government has certain *principles* inherent in itself, and upon which it subsists; in our government, is superadded to these, the peculiar relations of the *federative system*. To understand these properly, we must go over clearly and separately the *fundamental propositions* upon which the government depends. In doing this, we shall endeavour to establish them both by the constitution itself, and the fixed principles of political law.

§ 508. PROPOSITION 1ST. *The Government of the United States is a Republic.*

By our seventh definition, a republic is that form of government in which the *whole people*, or only a *part of the people*, hold sovereign power, and by the preamble to the Constitution, we see that the government of the United States was formed by "we the people;" by Art. 1, Sect. 1, of the Constitution, we find that all legislative power is vested in a *Congress*; and by Sect. 2d, That *Congress is chosen by the people*; hence it appears from the Constitution that the *people* of the United States hold sovereign power; the government is therefore a *republic*.

§ 509. PROPOSITION 2D. *The Government of the United States is a Federative Republic.* For we find in every article of the Constitution the recognition of states; by Article 1st, Sect. 2d, these states are *represented* in Congress in proportion to their *respective numbers*; by Sect. 3d, that these states have an equal representation in the Senate; by Art. 4, Sect. 2d, that these states have *citizens*; by Sect. 3d, that *new states* may be admitted into the Union; by Sect. 4, that the United States guarantee to these states a republican government; hence the United States is a *Federative Republic*, composed of *states*.

§ 510. PROPOSITION 3D. *The Government of the United States is a Democratic Federative Republic.*

By Definition 8th, a democracy is where the *sovereign power* is in the hands of the *whole people*. By Art. 1, Sect. 1, of the Constitution, the legislative power is vested in a Congress, composed of a Senate and House of Representatives; by Sect. 2d, the representatives are chosen by the *people*, and the electors have the same qualifications as are necessary for the most numerous branch of the state legislatures; by Sect. 3d, the Senate is chosen by the state legislatures; and by Art. 2d, Sect. 1, the executive is chosen by electors appointed

in such manner as the state legislatures may direct; hence, both legislative and executive branches of the government are chosen by the people, and the electors have the qualifications necessary for electors of the most numerous branch of the state legislatures; by reference to the state constitutions, we find, that the electors for the most numerous branch of the state legislature are substantially *the whole body of the people*; hence, the government of the United States is a democracy, and as it is, by former propositions, a federative republic, it is a democratic federative republic.

§ 511. PROPOSITION 4TH. *The Democracy of the United States is a Representative Democracy.*

By Art. 1, Sect. 2d, the representatives are *chosen*, &c. By Sect. 3d, the Senate is *chosen* by the legislature; and, by reference to the state constitutions it will be seen, the legislatures are *chosen* by the people; by Art. 2d, Sect. 1st, the executive is chosen by electors, appointed in such manner as the legislature may direct. By Art. 2d, Sect. 2d, the judiciary is appointed by the President and Senate; hence all the branches of the government are directly or indirectly chosen by the people; and hence the government is a representative democracy.

§ 512. PROPOSITION 5TH. *The foundation of the government is the consent of the people.*

In the Declaration of Independence, it is laid down that governments derive their just powers from the *consent of the governed*, and the preamble to the Constitution asserts that it was formed by "we the people." The ratifications of all the states commence with "We the delegates of the people;" hence the Constitution is, as it purports to be, founded only on the consent of the people.

§ 513. PROPOSITION 6TH. *The sanction of the government is responsibility to the people.*

By Art. 1, Sect. 2d, of the Constitution, the representatives are chosen every second year; hence they are, at

the end of that time, directly amenable to the people ; in addition to which, each individual member is liable to expulsion by the whole ; by Art. 2d, Sect. 1st, the executive is chosen every *four years*, and is therefore likewise responsible to the people at the end of that time ; by Art. 1, Sect. 3, he may be impeached, and by the votes of two-thirds of the Senate, removed from office for treason, bribery, and other high crimes and misdemeanours. He is, therefore, both directly and indirectly responsible to the people. By Art. 2d, Sect. 2d, the President, in conjunction with the Senate, has the power of appointing ambassadors, judges, and all other superior officers ; and by the declaration of Congress, and the practical construction of the Constitution,¹ he has also the power of removing them ; these officers consequently are all of them directly responsible to the President, and by Art. 1st, Sect. 2d, they may also be impeached ; they are, therefore, responsible to the people through the President, and likewise by impeachment. The *judiciary* is the only part of the government not *directly* responsible to the President ; but they are *indirectly* ; for, by Art. 2d, Sect. 2d, they are appointed by the President, who is himself responsible, and by Art. 1st, Sect. 2d, they may be impeached by the representatives of the people, who hold the *sole power* of impeachment ; all branches of the government, therefore, and all its officers, are made responsible to the people ; hence, the sanction of the government is *responsibility* to the people.

§ 514. PROPOSITION 7TH. *The principle of the government is the virtue of the people.*

This follows from several considerations : in a despotism or monarchy, he who executes the laws also makes them ; but in a popular government, he who executes the laws is also subject to them. The

¹ Chapter 2, Section 312.

monarch, then, who by bad counsel or negligence allows the laws to go unexecuted, may easily repair the evil by changing his counsellors, or correcting his negligence. But when, in a popular government,¹ *the laws cease to be executed*, as this can happen only from *corruption, the state is already lost*. Thus, when after the death of Charles I. the English attempted to establish a republic, they could not, because those who took part in public affairs had *no virtue*, and one party was continually opposed and put down by another, till at last, the people seeking a democracy, and finding they had no part in it, reposed at last upon the same government they had before proscribed. Thus also in Rome,—when Sylla offered the people liberty, they would not accept it because they had *not virtue* enough: and ever after, when despotism became intolerable, they struck a blow at the *tyrant*, but never at the *tyranny*. They had not virtue enough to change the form of government. Thus also will it be with the people of the United States when they become corrupted. For half a century, the Constitution and laws have been executed and respected, because the people have retained a portion of the same civic virtues which preserved their country in the Revolution, and rescued it from the hands of hereditary corruption; but, whenever the people shall have become so insensible to virtue as to allow men to triumph over laws, they will be *corrupt, and the republic lost*.

§ 515. PROPOSITION 8TH. *The Constitution of the United States proceeds from the people in their sovereign capacity.*

By the 7th Article of the Constitution it was to become valid, among the parties to it, when ratified by the conventions of nine states; accompanying the Constitution was a resolution of the convention forming it,

¹ Montesquieu's *Spirit of Laws*, book 3, chap. 3.

that it be laid before Congress, with a recommendation that it "be submitted to a convention of delegates, chosen in each state by the people thereof, for their assent and ratification." Agreeably to this recommendation and the article above cited, it *was* referred to conventions of the *people* within their several states"; these conventions came from the people in their *original, sovereign, social* capacity; they were assembled without any other form than what they imposed upon themselves, without any limits as to the authority they should either give or take away,—and in the name of the people only gave their assent to the proposed government; all these ratifications were made in the name¹ of the people, and not the states. Without these ratifications the instrument would have been invalid, and with them it received all the authority of a limited government over the people and the states. Hence, it is obvious, that the Constitution proceeded from the people in their sovereign capacity.

§ 516. PROPOSITION 9TH. *The Constitution of the United States acts upon both individuals and states.*

That it acts upon states imperatively is obvious enough; for every article of the Constitution refers to states, and requires something to be done by them, or prohibits them from doing something. Thus by Art. 1, Sect. 3, they are required to choose senators; by Sect. 4, to prescribe the times, places, and manner of holding elections for senators and representatives, and by Sect. 10, are prohibited every act which appertains to *national* sovereignty.

It acts upon *individuals* thus: by the powers vested in Congress by Art. 1, Sect. 8, individuals may be subjected, by the laws of the United States, directly to taxation, to militia service, to the rules of naturalization, to rules for the punishment of felonies on the high seas,—

¹ 4 Elliott's Debates, 247, 248.

and also through the powers for the regulation of commerce, and for regulating the coinage : in all these, and in many other respects, the Constitution and laws of the United States act directly on individuals.

§ 517. PROPOSITION 10TH. *The Constitutions of the states act upon individuals, but not upon the government of the United States, nor upon each other.*

1. They act upon individuals, because nearly all the state legislation is municipal, and refers to individuals only. Thus, the establishment of municipal courts, the organization of juries, the division of towns, the incorporation of local societies, and local taxation, all emanate from the state laws. 2. They do not act upon each other, because, as it respects each other, the states are all precisely equal, and have no authority over one another ; it is no exception to this, that the Constitution has given a judgment in one state full force and validity in another ; for this is a consequence of national, not state laws ; even *foreign judgments* are *prima facie* evidence in other countries. 3. They cannot exercise any power over the national government ; for that would place the national government at the mercy of any one of the states, and would be inconsistent with its existence. Thus the state governments cannot tax the stocks of the United States government, nor any of the constitutional means employed by government for constitutional ends.¹

§ 518. PROPOSITION 11TH. *The government of the United States is not a mere league.*

The proof of this may be found, 1st, in the *intention* of those who framed the Constitution ; and 2dly, from the powers vested in the framers of it.

The evil intended to be remedied was that of a confederation, or league *without a sanction*, and consequently without the means of enforcing its decrees.

¹ *M'Cullough vs. State of Maryland*, 4 Wheaton, 316.

Such a confederation is in theory weak, and all experience has proved it so. By the third article of the old Confederation, the nature of it was defined, and characterized as a "firm league of friendship for each other, for their common defence, the security of their liberties, and general welfare." The powers of the Confederation, or League, were vested in a Congress, without a Judiciary, and without an Executive; in this Congress, the states were represented in their sovereign capacity, and treated with each other as with foreign nations; the people, moreover, were in no manner amenable to the judgments of the Congress; that body had no power over them; they were answerable only to their state governments; this Confederation, then, had no feature of a government, and was in fact a simple meeting of ambassadors, vested with more than ordinary powers. This, then, was the evil to be remedied,—the *want of a government*. Looking then to the existing evil, and to the object in view, we should conclude, *a priori*, that the Constitution thus formed was intended to be a government, and not a league. 2dly. But, if we go further, and look to the actual instructions of the delegates, we shall find, that the intention was to *constitute a government*, and preserve the *union*. Thus, the express words used in the *credentials* of the delegates from Connecticut, New-York, and New-Jersey, were to take such measures as were necessary to "render the federal constitution adequate to the exigencies of the *government* and the preservation of the *union*." And such was the substance of the instructions from the majority of the states. Hence, we see that the *intention* was to form a government, and not a league.

§ 519. But 2dly, That they *did* form a government, and not a league, appears from the terms of the Constitution; for by the articles of confederation, and those of all leagues, purporting to be such, the states constituting them reserved to themselves an *equal vote* in the

Congress ; indeed, this is of the *essence* of all leagues ; but, by the Constitution of the United States, the states have not an equal vote in the Congress, but in the House of Representatives vote by numbers, and in the Senate, though the representation is equal, the *vote is by persons*. Again, the acts of leagues bind only the states that compose them, and do not operate on persons. In the Constitution of the United States, however, the laws operate not only upon the states, but, as we have shown by Prop. 9th, upon the people at large, and individually. Besides these considerations, the division of the powers granted, into Executive, Legislative, and Judicial,—the mode of electing the President, and the careful construction of the Judiciary, all incontestibly prove that the Constitution constitutes a *government*, and not a *league*.¹

§ 520. PROPOSITION 12TH. *The government of the United States is sovereign in its national capacity.*

By our first definition, *Sovereignty* is the highest power in a state ; and for a state or nation to be sovereign, it must *govern itself*, and be *independent* of other powers.² Now, if we apply these characteristics to the government of the United States, we find that it possesses them all. 1st. It is the highest power in a *national* sense, because it is the *only* power which, in the United States, can exercise national authority ; it is the *only* power which can lay *taxes* upon all the states ; the *only* power which can declare *war*, make *peace*, and enter into *treaties*, coin money, or regulate commerce,

¹ *Note*.—The obvious intention and understanding of the framers of the Constitution upon this point, might be illustrated by the quotation of many passages. I shall only give one.

“A government by compact is no government at all. You may as well go back to your congressional federal government, where, in the character of ambassadors, they may form treaties for each state.”

Mr. Morris, Debates in the Federal Convention.

² Vattel's Law of Nations, p. 16.

or in short do any act characteristic of national sovereignty. 2d. It *governs* itself, for, by Art. 1st. Sect. 8th, Art. 2d, Sect. 2d, Art. 3d, Sect. 2d and Sect. 3d of the Constitution, the government of the United States is vested with all the powers of *self-government*. 3d. It is independent of all other powers; for, by the Declaration of Independence, and the subsequent successful termination of the War of the Revolution, and the adoption of the Constitution by the states then composing the Confederation, the United States became independent of all *foreign* nations; and we have already shown, by Prop. 10th, that the states could not control the general government within constitutional limits, therefore the United States are *sovereign* in their *national* capacity.

§ 521. PROPOSITION 13TH. *The Governments of the states are sovereign in a municipal, and are not sovereign in a national capacity.*

By the 10th article of the amendments to the Constitution of the United States, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." Now the power to make municipal laws,—by which are meant all laws which concern only the state, directly and immediately,—is not vested in Congress, neither is it prohibited to the states, it is consequently among the reserved rights of the states and the people: and by the various state constitutions, we find that the people have vested it, so far as is not inconsistent with personal rights, in the state legislatures. It is therefore their proper prerogative to exercise it. Thus, all the laws relative to state taxation, chartered companies, eleemosynary institutions, and police regulations, are within the powers of state legislatures. They are, therefore, *sovereign* in their municipal capacity. They are not *sovereign* in a na-

tional capacity, because in that respect they are not "the highest power." The government of the United States, as we have seen by Proposition 12th, is sovereign in a national sense, and it is only sovereign in that sense; for, by Art. 1, Sec. 10, the states are forbidden to exercise any power characteristic of *national* sovereignty; thus, they cannot make peace, or declare war, tax imports and exports, make treaties, and coin money; they are, therefore, not sovereign in that sense.

§ 522. PROPOSITION 14TH. *The government of the United States is superior to, and sovereign over the governments of the states, in those cases in which they are constitutionally brought into collision.*

This may be proved by examples drawn from each of the great departments of the governments. 1. Of the Legislative. Thus, Congress have the power to tax articles of consumption; so have the states; now, should Congress and the states both tax the same article, the state cannot, by excessive taxation, exhaust the article so as to prevent the collection of the United States tax; again, the states may grant, as New-York did, a peculiar privilege to navigate the waters of their states; but should another person get a coasting license under the navigation laws of the United States, the monopoly must yield to the laws of Congress; again, we have already seen that Congress can constitutionally make a law securing *priority of payments*, and such a law, whatever the state laws may be, must have precedence.

§ 523. 2. Of the Judiciary. By Art. 3d, Sect. 1st, of the Constitution, the judicial power is expressly extended to all cases in which the United States are a party, and to all controversies between two or more states. In all judicial matters, therefore, between the United States and the states,—the United States government are *supreme*, and all matters in relation to such

controversies must be decided according to the Constitution and laws of the United States. The legislatures of the states cannot annul the judgments, or determine the jurisdiction of the courts of the United States.¹

§ 524. 3. Of the Executive. By Art. 2d, Sect. 2d, of the Constitution, the President is commander-in-chief of the militia of the several states when called into service ; and as a consequence of this power, whenever the troops of the United States, and the militia are on service together, the officer commanding the troops of the United States commands the whole.

Hence we see, that in all cases where there can be a constitutional collision between the authorities of the United States and those of the states, the former are *superior to, and sovereign over the latter.*

§ 525. PROPOSITION 15TH. *The people of the United States are one nation.*

This may be shown by considerations drawn from various sources, 1st. We see by the adoption, and subsequent history of the Constitution, that the United States have, for nearly half a century, been living under *one government* ; and, by proposition 12th, that this government possesses *entire national sovereignty* ; with respect, therefore, to its exterior relations, the United States are one nation ; they are represented, and known *officially*, as such, all over the world. Again, they are such *internally* as well as externally ; for, by Proposition 8th, we have demonstrated that the Constitution of the United States proceeds from *the people in their sovereign capacity*. It did not proceed from the states, as separate communities, and throughout all the proceedings on its adoption, this idea strongly predominated. States are recognised throughout the Constitution, but only as instruments in the hands of the same people who are alike the authors, both of *the Union and of the*

¹ 5 Cranch, 115.

states. The people, on the occasion of the adoption of the Constitution, acted in their original, sovereign, *national* capacity. Having thus originated, we see that the Constitution is binding, not upon the states only, but upon the whole people. It acts upon them individually, and therefore as one nation. This we have seen in Proposition 9th. Further, no small proof of this proposition, like that of others, may be derived from a view of the object and intentions of those who instituted the government. The single object of the present government was to perpetuate the union, and consolidate the national interests. This is expressly stated in all the proceedings prior to the formation of the Constitution, in the debates of the Federal Convention,¹ and in the admirable letter² of General Washington, transmitting the Constitution to the governors of the several states. "In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety,—perhaps our national existence." These sentiments of Washington were doubtless those of all, at that time, except a very few, who were jealous lest the national should entirely destroy the state governments. Time has shown that such jealousies were wholly illusory, and the only danger is, that the states may encroach too far on the prerogatives of the general government.

§ 526. Another consideration in favour of the entire unity of the nation, and its future continuance, may be found in the unity of its language and manners. It is believed that no nation on earth is so entirely *homogeneous*. If we look to Great Britain, we find that people composed of four different nations,—the Welch, English, Irish, and Scotch. Between the original lan-

¹ 4 Elliott's Debates, 56, 137.

² Idem. 248.

guages of these people there is scarcely a resemblance. If we limit the examination to England, we find the dialects of London and Yorkshire more diverse than those of the extreme parts of our union. If we look to France, it is the same. Germany also is composed of people speaking different tongues. The vast empire of China is the same. But how is it in the United States? From Maine to Missouri, through all the United States, their language is the same; there is no change of tongue: the only discoverable difference is in the use of particular words, which occasionally betray the birth of the speaker. It is true there are occasional settlements of Germans, but they are too few in comparison with the mass, to mark any particular district with a distinct language.

With respect to *written* language, it is everywhere the same. Even the Grecian, pure as it is found in Homer, contains more dialects than can be found in the whole compass of American authors.

§ 527. The same remark which we have made with respect to language, may be affixed with nearly equal force to manners. There are few customs or habits in one portion of the union, not to be found in another; none which could give one district a distinct national character from another.

The United States are, therefore, emphatically *one nation*. Politically, socially, morally, they are stamped with one character, and must share the same destiny.

§ 528. PROPOSITION 16TH. *The Government of the United States is a government of majorities.*

In the conventions of the people which ratified the Constitution, a majority in any one convention made the decision; for no other rule could be applied when they were subordinate to no authority but their own. But in the Constitution of the United States, and in those of the several states, this principle is everywhere manifest. 1st, Of the Legislature; members of the House of

Representatives are chosen by majorities of the people, and the House of Representatives decide by majorities; and by Art. 1st, Sect. 5, a majority constitutes a quorum. Members of the Senate are chosen by majorities of the Legislatures, who are themselves chosen by majorities of the people. A majority of the Senate likewise decide all legislative questions,—except one, which will be hereafter mentioned.

§ 529. The *Executive* is chosen by the majority of the electors, and when there is no such majority, by a majority of the state representations in the House. The electors are chosen by majorities of the people, or of the state legislatures. It is true, there is a *possibility*, by a combination of majorities in minor districts, that the executive should be elected by a minority of the votes of persons; but this is a contingent occurrence of very remote probability. It is a case not within the contemplation of the Constitution, which could only provide for the common course of human events. 3. Of the *Judiciary*. The judges are appointed by the President, who is elected by a majority; and their appointments are confirmed by the Senate, who also are elected by a majority. They are, therefore, appointed *indirectly* by a majority. But the theory of the Constitution required that they who, of all the members of the government, should be purest from every touch of violence or corruption, should by many checks and guards be placed as remote as possible from popular action.

§ 530. The exceptions to this almost universal rule are cases of obvious and urgent propriety. 1st, The Senate cannot confirm a treaty without the concurrence of *two-thirds* of its members. The reason of this is, that treaties have, by the Constitution, the *validity* of laws; yet they are made by the Senate, and President, without the concurrence of the Representatives, and therefore ought to be enacted by the Senate with more than usual unanimity. It is therefore provided, that

two-thirds must concur in the confirmation of a treaty. 2d. The second exception is in the case of an *impeachment*. This also requires *two-thirds* to make a conviction. This is in order to give greater certainty, accuracy, and solemnity to convictions involving life, property, and reputation.

Thus we see that the whole structure of the government is based upon the acts of majorities, and that these majorities, at last, rest upon a majority of the whole people.

§ 531. PROPOSITION 17TH. *The Government of the United States is perpetual, unless abrogated by the will of a majority of the whole people.*

A government can only be abrogated by the same power which brought it into existence. Now by Proposition 8th, the Constitution of the United States proceeds from the people in their sovereign capacity. The people then, in their sovereign capacity only, can abrogate it. That they have the power to do so is obvious enough; it is only asserting the common right of all nations to institute, alter, and amend their forms of government. That is the *right of revolution*. Till that right is exercised, the Constitution is perpetual.

§ 532. But what is meant by the people in their sovereign capacity? Are not the *states that sovereignty*? No; for we find the following provisions among the amendments to the Constitution.

Article 9th. *The enumeration in this constitution of certain rights, shall not be construed to deny or disparage others retained by the people.*

Article 10th. *The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.*

Now in these articles there are three sets of rights recognised. 1. Rights granted to the government of the United States. 2. Rights granted, that is, "not

prohibited by it" to the *states*. 3. Rights retained by the people. Now the *states*, as here understood, the state governments cannot represent the original sovereignty of the people, because out of three portions into which the people have voluntarily divided their sovereignty, the states possess only one. This must be so, or there is no meaning in those articles of the Constitution. The states, therefore, embody only a part of the sovereignty of the people, and in the same sense that, mathematically, a part is not equal to the whole, they cannot perform the acts of a greater power; they cannot unmake what they never had power to make.

§ 533. But, may not the people of a state, assembled in its sovereign capacity, by means of delegates or otherwise, abrogate the Constitution as it respects itself, and secede from the Union? No. By Proposition 9th, the Constitution acts upon *individuals*. Now, the instant the people of a state cease to act officially through its state governments, they act individually, and are upon the level with the people of a town, county, or two states together. The Constitution acts upon individuals without any reference to state lines. In what way, then, could they escape the influence of the laws? Had they never voluntarily come under them, these laws could not have had any influence over them; or had they fixed a period to the duration of that influence, then at the expiration of that time they could have withdrawn. But, having taken neither of these positions, they can escape from the influence of their own act only by a revolution, and a revolution can be made only by a majority. A majority may do it, because, when government is to be thrown off, and men assume their original rights, there is no superior authority to limit the acts of a majority. Any less number, whether composing a state or parts of several states cannot do it without subjecting themselves to the penalties of *treason*,—as they would not have the power to revolutionize the government, but

would only be acting contrary to its laws and the existing authorities.

§ 534. Thus we have seen that a *state* cannot abrogate the Constitution, because its government is vested with only a portion of the sovereignty: and the people of that state cannot do it (unless they are a majority of the whole Union), because they must act individually, and the laws of the government acting upon individuals, any resistance by them to any constitutional exercise of authority would incur the penalties of *treason*.

It follows then, necessarily, that the government of the United States is perpetual, unless abrogated by the will of the majority of the whole people.

§ 535. We have now recited, with such proof as seems to us sufficient, the propositions which include the nature, principles, and relations of the United States Government. We have established;

1. That this Government is a Democratic Federative Republic;

2. That the Democracy of the United States is a Representative Democracy;

3. That the foundation of this Government is the consent of, and the sanction of it is responsibility to, the people;

4. That the great conservative principle of the government is the virtue of the people;

5. That the Constitution of the United States proceeds from the people in their sovereign capacity, and that it acts upon individuals as well as states.

6. That the constitutions of the states act upon individuals, but not upon the Government of the United States, nor upon each other;

7. That the Government of the United States is sovereign in a national, and the states in a municipal capacity;

8. That the Government of the United States, is in

case of constitutional collision, sovereign over, and superior to the state governments;

9. That the Government of the United States is not merely a league;

10. That the Government of the United States is a government of majorities;

11. That the Government of the United States is perpetual, unless abrogated by the will of a majority of the whole people; and that, consequently, no state can secede.

§ 536. With these propositions impressed upon the mind it is thought that little misconception can exist upon the nature and construction of the United States government. Some of them have, it is true, been disputed in times of warmth and excitement; but all of them have been supported by a great majority of the American people, and illustrated by the acts of public bodies, and the works of distinguished statesmen from the Revolution to the present time.

BOOK II.

PRACTICAL OPERATION OF THE NATIONAL AND STATE GOVERNMENTS.

CHAPTER I.

PRACTICAL OPERATION OF THE NATIONAL CONSTITUTION.

§ 537. When the Constitution had been *ratified* by the requisite number of states, it had acquired its *legal force*, but was inert till properly put into operation. The people had made it an instrument of great and beneficent powers, but their *action* under it was necessary to give it life. The *mode* of doing this had been provided by the convention. They had "resolved that, as soon as the conventions of nine states should have ratified the Constitution, Congress should fix a day on which electors should be appointed by the states which should have ratified the same, and a day on which electors should assemble to vote for President, and the *time and place of commencing proceedings under the Constitution*. That, after such publication, the electors should be appointed, and the senators and representatives elected," and such other regulations as were necessary, &c.; and that, "after the President was elected, *he and Congress*

should, without delay, proceed to *execute the Constitution*.¹

§ 538. Accordingly Congress, after the ratification of a sufficient number of states in July, 1788, ²Ordered, that the several ratifications of the Constitution of the United States be referred to a committee, to examine and report an act for *putting said constitution into operation*. A committee was appointed, and the following resolution passed,³ "Resolved, that the first Wednesday in January next be the day for appointing the electors in the several states which, before said day, shall have ratified the Constitution; that the first day in February next be the day for the electors to assemble in their respective states, and vote for a President; and that the first Wednesday in March next be the time, and the present seat of Congress the place for commencing proceedings under said Constitution."

§ 539. In pursuance of this resolution, the elections in the several states were held, at the time appointed, and on Wednesday, the 4th of March, 1789, *the Constitution went into practical operation*. On the 30th April, George Washington, unanimously elected, was inaugurated President of the United States. Subsequently to this, North Carolina and Rhode Island, which had not then ratified, joined the Union. Soon after, a number of amendments, the effect of which we have heretofore considered, were recommended to the states by two-thirds of Congress, and adopted.

§ 540. Thus the operation of the Federal Government was begun. The arrangement of the Judiciary, the rules of proceedings, the organization of the departments, and the appointment of officers, were within the power of Congress and the Executive, and formed the earliest objects of their consideration.

§ 541. In practice, as well as theory, the government

¹ 4 Elliott's Debates, 249.

² Idem. 221.

³ Id. 222.

is divided into three great departments, having distinct duties to perform,—the Executive, the Legislative, and the Judicial ; in this order, we shall consider the practical operation of the government.

1. OF THE EXECUTIVE.

§ 542. By Art. 2d, Sect. 1st, of the Constitution, *the executive power is vested in the President*. By Sect. 2d, *he is commander-in-chief* of the army, of the navy, and of the militia when called into actual service. He may require the opinion in writing of the principal officers of the executive departments, upon any subject relating to the duties of their offices, and has power to grant reprieves, pardons, &c. &c. He has the appointment, in conjunction with the Senate, of ambassadors, other public ministers, consuls, judges of the Supreme Court, and all other officers of the United States, except those inferior officers whose appointment the Congress may vest in the heads of departments, courts, &c. He receives ambassadors and other public officers, takes care that the laws are faithfully executed, and commissions officers.

§ 543. These are all the general duties annexed by the Constitution to the office of President. We have already seen that they could not be performed, till Congress had first *erected* the *offices* which were to be filled, and *enacted* the *laws* which were to be executed. We shall now see how this was done.

§ 544. The *constitutional duties* above enumerated comprehend all *the executive duties* of the government; for the *President* is the *only* executive officer known to the Constitution, and the only one responsible to the people. The duties, however, are obviously too numerous and various for one man ; hence, the Constitution contemplated the appointment of inferior officers, and the division of labour among subordinates. For this purpose Congress has, at different times, created the

Departments of State, Treasury, War, Navy, Post-office, and Mint. The duties of each of these departments have been prescribed, and may be considered separately.

1. OF THE DEPARTMENT OF STATE.

§ 545. This department was created by the act of the 15th September, 1789. The presiding officer is called Secretary of State, and, like other officers, is commissioned, with the advice and consent of the Senate. His duty is to conduct the foreign affairs of the United States, whether by correspondence, commissions, instructions, or memorials, with foreign powers or public ministers. He keeps the seal of the United States and affixes it to all civil commissions, provided they have the signature of the President. He is intrusted with the publication and distribution of all acts and resolutions of Congress, and all Treaties with Foreign nations and Indian Tribes.¹ He preserves the original of all treaties, public documents, laws, and correspondence with foreign powers: he preserves copies of the several statutes of the states, grants passports to citizens, and controls the Patent Office.

§ 546. These duties may be divided into classes.

1. Those which concern *foreign* intercourse; 2. Those which concern the preservation and distribution of the *laws*; 3. Which regard the *authenticity of commissions*; 4. Those which concern *copyrights and patents*.

1. Of Foreign Intercourse. It is necessary that nations should hold intercourse together, for the purpose of regulating trade, avoiding injuries, and terminating differences. It is equally obvious, that *they cannot treat together immediately, as two individuals*; they must, therefore, hold their conferences by means of *delegates*, that is, by *public ministers*.²

¹ Act of April 20th, 1818.
book IV chap. V. sect. 55, 56.

² Vattel's Laws of Nations,

§ 547. A public minister properly signifies any one charged with public affairs, but is here understood as one who is *charged with the care of public affairs at a foreign court*. Of these there are now *several orders*.

§ 548. The highest order is one which properly *represents* the government, or *sovereignty*, and is entitled to act for it upon all occasions. A person of this rank is called an *Ambassador*.¹

§ 549. The next rank is that of *Envoy*. This term signifies one *who is sent*, and means a minister sent for a particular purpose, as to adjust a special commercial treaty, or arrange disputed boundaries. There are envoys *ordinary* and *extraordinary*: of the same rank also are ministers *plenipotentiary*, who are sent with powers to make a particular treaty; thus, Messrs. Adams, Clay, &c. were Ministers *Plenipotentiary* to form the Treaty of Peace at Ghent.

§ 550. The *third order* is that of *Ministers Resident*, or *Chargé d'Affaires*, which means one who is *charged with the ordinary affairs of the nation at a foreign court*.

§ 551. These are all the orders of public ministers, as commonly understood, resident at foreign courts. There are, however, several other classes of public officers, through whom intercourse is held with foreign nations.

§ 552. To each *foreign embassy* is attached a *Secretary of Legation*: this officer performs the duties of a secretary, or clerk to the mission, and is frequently left in *charge of affairs* when a minister is recalled.

§ 553. *Consuls* are *commercial agents*, appointed by the government to oversee, and take charge of the affairs of individuals when they have no agent of their own present.

§ 554. The *laws of the United States* prescribe the

¹ Vattel's Laws of Nations, chap. VI. sect. 71, 72.

² Act of April, 1792.

following duties to *American Consuls*. 1. It is made their duty to act as *administrators* upon the estate of such American citizens as shall die abroad, without leaving a legal representative, partner, or trustee, and at the end of one year account to the Treasury of the United States for his effects, &c. &c.

§ 555. 2. When *vessels are stranded*, it is their duty to take all proper measures to save the same, and when no master, owner, or consignee is present to take care of the goods and effects, and deliver the proceeds to the owners.

§ 556. 3. ¹It is their duty to receive from vessels sailing from the ports of the United States their Registers, Sea Letters, Passports, &c., and when said vessel produces her clearance, to return them to the master.

§ 557. 4. Whenever a ship is sold, or her crew discharged in a foreign port, to receive from the master *one month's pay* from each seaman, to constitute a fund for the *maintenance of destitute American seamen*, and to account for the same with the Treasury every six months.

§ 558. 5. It is the duty of *Consuls* to provide for the *support and passage* to the United States of *destitute American seamen*, in a reasonable manner, and *at the expense* of the United States. For the proper performance of these duties, they are obliged to give bonds with securities, and for their time and trouble are allowed certain specified fees; their delinquencies are punished by fine and imprisonment.

§ 559. These consular agencies are established in nearly all the countries and ports where the United States have any commerce. Their great *object* is to ascertain the *legality* of the trade of American vessels in foreign ports, and afford protection and relief to American seamen and citizens, who may be in foreign countries.

¹ Act of February, 1803.

§ 560. 2. *Credentials*. A public minister is known by his credentials. ¹Letters of Credence are the instruments which authorize and establish a minister in his character, with the government to whom they are addressed : they are his general Letter of Attorney.

§ 561. *Instructions* are the secret letter of directions given by a government to its minister, to inform him how he is to act, and what he is to perform.

§ 562. For the purpose of preserving the dignity of their respective governments, and performing their duties with safety, public ministers and their servants are by the laws of nations² allowed certain privileges ; viz.

§ 563. 1. The persons of ministers are sacred and inviolable among all nations. This privilege extends to them from the time they first enter the country to which they are sent. So also they are allowed personal safety in all countries through which they pass.

§ 564. ²A public minister has an entire independence from the jurisdiction and authority of the state where he resides. To these rules there is an ³exception, in case of an ambassador's converting these privileges into licentiousness. If an ambassador abuses his privileges, and commits wrong, he may be restrained ; 1. By application to his master, and if he fail to recall him, by ordering him out of the country. 2. In case he take up arms, or commit open violence, he may be quelled by force. In case he intrigue, or form a conspiracy, he may be arrested, or otherwise disposed of according to the exigency of the case. ⁴A well known instance of that kind occurred in this country, in the case of Genet, the French minister, during the administration of General Washington. The President only requested the French government to recall Mr. Genet, which was

¹ Vattel, book IV. chap. VI. sect. 76, 77.
83, 92, 93. ² Pitkin's Civ. Hist. vol. II.
chap. VII.

³ Idem. sect. 81.
⁴ Vattel, book IV.

done; no doubt harsher measures would have been justifiable.

§ 565. ¹*A Consul is not* such a public minister as to be entitled to the privileges of that character, nor is he under the special protection of the laws of nations.

§ 566. The *credentials* of foreign ministers are received by the Secretary of State, and examined; all the business and correspondence is carried on by him: it is in writing, and placed on record.

§ 567. Passports to visit foreign countries are made out by the Secretary of State. Passport properly signifies a *safe conduct* in war. In such case, the government or authority granting them is bound to make good any damage the bearer of them might suffer. In peace, it is little more than a certificate of citizenship, and entitles the bearer to safety and civility among foreign nations, so far as respects the public authorities, when the laws are not violated.

§ 568. 2. *Preservation and publication of the Laws.* The *originals* of all treaties, laws, resolutions, and diplomatic documents are deposited in the office of the Secretary of State. The laws, resolutions, and orders of each Congress are printed, by direction of the Secretary of State, and distributed among heads of departments, members of Congress, public libraries, and the several states of the Union. It is made the duty of the Secretary to procure copies of the *statutes* of the several states, and preserve them.

§ 569. The *laws, resolutions, and orders* of Congress are annually printed, under the direction of the Secretary, in three newspapers, in each state and territory of the United States. These papers are selected by him, and receive a fixed compensation for the publication.

§ 570. ²In addition to the publication of the laws here mentioned, the Secretary is charged with the

¹ Kent's Comm. vol. I. p. 43.

² Resolution of April, 1816.

formation, and publication of a *biennial catalogue*, for the use of Congress and the public likewise, of all the officers, civil and military, of the United States, with their compensation, the state where born and where employed; and also the names, force, and condition of all the vessels belonging to the United States, when and where built. This Register informs Congress, and through them the people, the exact number and location of all the officers of the United States, and the amount required for their support.

§ 571. 3. *Authenticity of Commissions.* It is necessary that all *commissions* of public officers should be rendered authentic by certain signs and signatures. For this purpose, it is provided that all commissions shall be signed by the President, who is the appointing power, and sealed with *the seal of the United States*. This seal is kept in the Department of State, and affixed to all civil commissions which have been signed by the President. There is also in the Department of State a *Seal of Office*, used by the Secretary to *authenticate copies* of records and papers, which copies are received as *evidence equally with the originals*.

§ 572. 4. *Patent Laws, and Copyrights*;—The Patent Office is under the control of the Secretary of State. The provision of the Constitution under which patents are obtained, has already been discussed.

§ 573. The *laws* for obtaining patents require, 1. That those who obtain patents should be either *citizens* or *aliens* having resided in the country *two years*. 2. That it be obtained by *petition* to the Secretary, in a form prescribed. 3. That on presentation of such petition, *thirty dollars* must be paid into the Treasury of the United States. 4. There must be a *specification* or description of the art, invention, or discovery for which the patent is obtained. This must describe not only the form and construction, but the *mode* of using the

¹ Acts of February 21st, 1793, and April 17th, 1800.

machine, &c. It must mention whether it is an improvement, or a new machine. It must be without reference to drawing or model, and must be signed by the applicant, before two witnesses. 5. This must be accompanied by an oath, or affirmation, that the applicant is the true inventor, &c. 6. If not a citizen, the applicant must make oath that the same has not, to his knowledge and belief, been used in this or any foreign country, and that he has resided in this country two years. 7. When the patent is for a machine, a perspective drawing must accompany the specification; and when it is complicated, there must be sections of the interior, and if required, a model. If it be for a composition of matter, sufficient must be deposited for experiment. 8. When there are two applicants for the same invention, the law provides for the appointment of three arbitrators, one by each party, and one by the Secretary of State.

§ 574. When patents are violated, the trespasser must pay to the patentee three times the actual damage proved to have been sustained.

§ 575. An inventor may assign his right before the patent has issued, and the assignee may take out a patent, or he may assign the patent after it is obtained.

§ 576. ¹Copyrights are secured to the authors of books, maps, charts, and musical composition, by simply depositing in the Clerk's Office of the District Court of the United States for the district in which the author or proprietor lives, a copy of the title of such work, which the Clerk records. He must also deposite, in said Clerk's office, a copy of the work, within six months after its publication.

§ 577. The time for which copyrights are taken out is twenty-eight years, and at the expiration of that time, the author, or his widow, or children, may renew the right for fourteen years longer, upon condition of record-

¹ Act of February 3d, 1831.

ing the title a second time, six months previous to the expiration of the former term, and causing the title to be published in one or more newspapers for the space of four weeks.

§ 578. The author must likewise give notice, by advertisement in or on the work, that it is *entered according to act of Congress*.

§ 579. In the case of books, the *penalty* infringing a copyright is the *forfeiture* of every volume so printed to the author, and the forfeiture for *every sheet* printed, or printing, of the sum of fifty cents, one-half to the author, and one-half to the United States; and in addition, to pay the author all the damages, which he may prove or recover, on a *special action upon the case*.

§ 580. We have now enumerated the several duties which devolve upon the Department of State, and the mode in which they are performed. These duties are performed by the Secretary, assisted by clerks, messengers, watchmen, &c.

For the officers in the State Department, see Table.

2. OF THE TREASURY DEPARTMENT.

§ 581. The object of this department is to manage the *moneyed concerns* of the government. It was created by the act of September, 1789. The general duties of the Secretary of the Treasury are to prepare and digest *plans* for the *improvement* and *management* of the *public revenue*, and for the support of the *public credit*. To execute such services relative to the *sale of lands* as may be required of him: to make reports, and give information to either branch of the legislature, in person or writing, respecting all matters referred to him by the Senate or House of Representatives, or which shall pertain to his office.

§ 582. To perform the details of these duties, they have been distributed among eleven *sub-departments*, viz. The 1st comptroller; the 2d comptroller; the 1st,

2d, 3d, 4th, and 5th auditors; the treasurer; register; solicitor; and land offices. At the head of each of these sub-divisions is a separate officer, charged with specific duties, and who has under him a number of inferior officers.

§ 583. 1. The Secretary of the Treasury himself prepares the annual report to be laid before Congress of the state of the National Finances; prepares plans for the improvement of the revenue;—reports in answer to the calls of Congress, and gives a general superintendence to all the branches of the Department.

§ 584. 2. The first comptroller¹ examines all accounts settled by the first and third auditors, and certifies the balance thereon to the register; countersigns warrants drawn by the Secretary of the Treasury, if authorized by law; reports to the Secretary the official forms to be used in the different offices. He superintends the preservation of the public accounts, subject to his revision, and provides for the regular payment of all money which may be collected.

§ 585. 3. The second comptroller is independent of the first. It is the duty of this officer to revise and certify the accounts stated in the offices of the second, third, and fourth auditors; in his office is kept a record of the *accounts settled*, showing the balances due to and from the United States; a record of all the requisitions for money drawn by the Secretaries of the War and Navy Departments; on its files are placed all contracts involving the payment of money within these departments. It is the duty of this comptroller to keep an account with each specific appropriation, and to make such statements of the disbursements as may be required by law.

The ²*decisions* of the comptrollers upon all matters of account submitted to them, is *final*.

¹ *Forbes's National Calendar.*

² *Act of May, 1792.*

In the mode of disbursing money from the Treasury, there is a system of *checks* provided, which gives perfect security to the national funds. Money, which has been appropriated, may by the President and Secretaries be advanced to the public agents, but those agents must render their accounts to the comptrollers, and be by them admitted before the payment will be legal. Accounts in general must first be *audited*, and then be certified by the comptroller.

§ 586. 4. First Auditor. This officer receives all accounts accruing in the Treasury Department, and in relation to the revenue and civil list; and after examination, certifies the balance, and transmits the accounts and vouchers to the first comptroller for his decision.

§ 587. Second Auditor. This officer receives and settles, 1st. All accounts relative to the pay, subsistence, and forage of the army and officers, with the clothing of servants, &c. &c. 2d. The accounts pertaining to the clothing and purchasing departments. 3. All accounts for the contingent disbursements of the army, for which no specific appropriations are made by Congress. 4. Accounts relative to the hospital stores, drugs, medicines, &c., and the claims of private physicians for services rendered officers and soldiers. 5. Accounts relating to the recruiting department. 6. Accounts relating to the ordnance department, arsenals, the armament of new fortifications, and the arming of the militia. 7. Accounts relating to the national armories. 8. Accounts appertaining to disbursements in the Indian department, such as pay of agents, presents, annuities, contingencies, &c.

§ 588. 6. Third Auditor. The duty of this officer extends to the auditing of all accounts for the quartermaster's department, for money, and property; the same as to accounts for subsistence, and for fortifications; for the Military Academy, for roads, surveys, and other internal improvements; for revolutionary invalids, and

half-pay pensions; pensions to widows and orphans, outstanding claims, and all unsettled accounts of the war department to July, 1815.

§ 589. 7. Fourth Auditor. This officer receives all accounts accruing in the navy department, or in relation to it. He examines the accounts, certifies the balances, and transmits the accounts, with vouchers, and certificates, to the second comptroller, for his decision upon them.

§ 590. 8. Fifth Auditor. He receives all accounts in relation to the Department of State, the general post-office, and the Indian trade; examines them, certifies the balances, and transmits the accounts, with vouchers and certificates, to the second comptroller, for his decision upon them: he also has charge of superintending the buildings and repairing the light-houses, light vessels, beacons, buoys and piers, and the adjustment of the expenditure of the light-house establishment.

§ 591. 9. The Treasurer of the United States receives and keeps the money of the United States, and disburses the same upon warrants drawn by the Secretary, countersigned by the proper comptroller and auditor, and recorded by the register.

§ 592. 10. The Register of the Treasury keeps all accounts of the receipts and expenditures of the public money, and of all debts due to or from the United States. He receives from the comptroller the accounts which have been finally adjusted, and preserves them. He records all warrants for the receipt and payment of money at the Treasury; certifies the same, and transmits to the Secretary of the Treasury copies of the certificates of balances adjusted. It is also his duty to prepare statistical accounts of the commerce and navigation of the United States.

§ 593. 11. The office of Solicitor of the Treasury was created by the act of May, 1830. He superintends all the *civil suits* commenced in the name of the United

States until they are carried into the Supreme Court of the United States, when they come under the superintendence of the Attorney-general; he instructs the district attorneys, marshals, and clerks, in all matters and proceedings appertaining to these suits, and receives from them after each term of court, reports of their situation and progress; he receives from collectors reports of custom-house bonds put in suit, &c.; he establishes, with the approbation of the secretary, rules and regulations for the observance of collectors, marshals, district attorneys, &c. This officer has charge also of the lands, which shall be assigned, set-off, or conveyed to the United States in payment of debts; he has power also to sell and dispose of such lands, and also of those vested in them by mortgage.

GENERAL LAND OFFICE.

§ 594. Grants of lands were made prior to 1812, by means of Patents from the Department of State. By the Act of April, 1812, there was erected a new office in the Department of the Treasury, called the General Land Office. The officer at the head of this is called the Commissioner of the Land Office. His duty is to superintend and perform all such acts and things, touching the public lands, as were formerly performed by the Department of State, by the Secretary and Register of the Treasury, or which shall hereafter be assigned to said office. He shall keep a seal of office; and *copies* of records, books, and papers under the seal of said office, shall be evidence in all cases in which the originals would be evidence. He shall, when required, make plots of any land surveyed under the authority of the United States, and give other information in relation to the public lands and the business of his office. All returns relative to the public lands shall be made to the commissioner, who shall audit and settle all accounts relative to the public lands; and it is his duty, upon

the settlement of the accounts, to certify the balances, and transmit them, with vouchers and certificates, to the Comptroller of the Treasury, for his examination and decision.

§ 595. Lands granted for military services shall be granted by *warrants* from the *Secretary at War*, recorded in the Land Office, and for which Patents shall be afterward issued. All Patents issued from the Land Office are in the name of the United States, signed by the President, countersigned by the Commissioner, and under the seal of his office. Neither the Commissioner, nor any one in his office, are permitted to purchase any public lands for himself, or for any other person, or in trust for any one.

SURVEY AND DISPOSITION OF THE PUBLIC LANDS.

§ 596. Under the general head of the Land Office comes the mode of surveying, selling, and otherwise disposing of the public domain. We have already seen, that at the adoption of the Constitution, much difficulty arose in respect to the public lands,—that they were finally ceded to the general government,—that the government established a separate department for their better regulation,—and that a system has been enacted by Congress for their disposition. What that system is we shall now inquire. It relates, 1st, To the mode of survey; and 2d, To the disposition of the lands, whether by sale or gift; 3d, To the title of the occupants.

§ 597. 1. As to the *mode of survey*. Previous to the year 1796, large tracts of land had been purchased by individuals of the government, grants had been made to Virginia, and other states, for military bounty lands, and these lands had been surveyed by the respective parties claiming title. The surveys were of course different, having no relation to each other, and some of them, particularly those made under the authority of Virginia, extremely defective. In disposing of military lands, for

example, no particular tract was sold, but a warrant was issued, and that warrant *located* by the *holder* on any ground not otherwise disposed of. These warrants likewise had different *priorities*, both as to *date* and *location*, which frequently had to be determined by litigation. The locations also were often made to lap upon one another. Hence, it became obvious, that some system of survey and sale, having for its basis safety, regularity, and permanency, must be adopted. By the acts of May, 1796, April, 1816, March, 1804, February, 1805, and of March, 1817, a complete system of surveying, upon scientific principles, was established under the authority of Congress.

§ 598. The surveying of the public lands is divided into six divisions, each of which is controlled by an officer, called a Surveyor-general, who has under him a sufficient number of deputies and clerks, and is charged with surveying all the public lands to which the Indian title is extinguished within his district.

§ 599. The surveying districts, as now established, are,
1. The Surveyor-general north-west of the Ohio, for the states of Ohio, Indiana, and the territory of Michigan.
2. The Surveyor of public lands south of Tennessee, for the state of Mississippi.
3. Surveyor for the states of Illinois and Missouri, and territory of Arkansas.
4. Surveyor of public lands in Alabama.
5. Surveyor-general for Louisiana.
6. Surveyor of public lands in Florida.

§ 600. The *duty* of the Surveyor-general north-west of the Ohio, as prescribed by the act of May, 1796, was the basis of those for all the others. By that act, the surveyor-general was directed to engage a sufficient number of skilful surveyors as deputies, and to survey and mark the unascertained outlines of lands lying within his district, to which the Indian title was extinguished, and to divide it in the manner hereafter described; it was also his duty to frame regulations for

the government of his deputies, administer the necessary oaths, and remove them for negligence or misconduct.

§ 601. The mode in which he was directed to survey the land was this :—The whole country to be surveyed is first divided by parallel north and south lines, or *meridians*, exactly six miles apart, and these again are crossed by other lines precisely at right angles, or east and west, to the first, and also six miles apart ; so that the whole country is divided into squares of six miles on a side, or thirty-six square miles : these squares are called *townships*, and are distinguished by numbers. These again are divided by lines parallel to the former, and exactly one mile apart, into other squares, containing one square mile. These last squares are called *sections*, and as there are exactly thirty-six square miles in a township, so there are precisely as many sections, numbered from *one* to *thirty-six*. The corners of the sections are all marked upon some tree near, and the number of the section is also marked. Each *column of townships*, or spaces between two of the north and south parallels, is called a *Range*, east or west of certain *meridians*. To describe a section accurately then, you say thus,—Section number 5, in Township number 4, in Range 3d, west of the Meridian, drawn through the mouth of the Great Miami river. Such a description fixes the situation of the ground with absolute certainty. The purchaser has only first to go to the 3d column of townships west of the given meridian,—which he sees by the map must be in the eastern part of Indiana,—then to look for township No. 4, and lastly for section 5 of that township, which will be marked by corner-posts, and limited by lines blazed on the trees. Since the first law directing the mode of survey, others have been passed, authorizing their survey into half and quarter sections, which has been done ; and of late, they have been subdivided into *eighths*. Each section, or *square mile*, contains exactly 640 acres ; of course, a

half section has 320,—a quarter 160,—and an eighth 80. A township, being 36 sections, contains precisely 23040 acres. To make these surveys accurately, it was first necessary to establish the *meridian lines*, or lines running due north and south; and this, to be done well, must be done astronomically. At the accession of Mr. Jefferson to the presidency, he, for this purpose, and for that of establishing the geography of the country, appointed a ¹gentleman of science and abilities to the office of Surveyor-general, under whose direction, and by whose astronomical observations, the principal *meridians* of Ohio and Indiana were established. The same system of survey has been continued ever since, and no country can exhibit greater accuracy in its internal geography, or greater security to its land titles, than that portion of the United States which has grown out of the public domain.

§ 602. 2d. The next subject in relation to United States lands is their *disposition*, whether by *sale* or *grant*.

1. *Disposition by gift*. The United States have been in the highest degree liberal, both to states and individuals, for the purposes either of charity or general utility. The principle and the mode of making these grants may be known for the whole, by examining those for the state of Ohio, the oldest of the states carved out of the public domain.

§ 603. 1. In the Ohio Company's Purchase, there were reserved *two townships* for the use of a university.

2. An entire township in Symmes' purchase was granted for the purpose of an academy, or university.

3. In the Ohio Company's and Symmes' Purchase, an entire section in each township is granted for the purposes of *Religion*.

¹ The person appointed was the late Col. Jared Mansfield, who filled the office of Surveyor-general from 1802 till 1812.

4. One section in each township, or one thirty-sixth part of the whole public land in that state, is reserved for *schools*.

5. Three per cent. of the funds arising from the sale of public lands is reserved for *roads*.

6. Congress have lately made large grants to aid in the construction of the Ohio Canals,—about 500,000 acres.

§ 604. The total amount of grants made to the state of Ohio for school, ministerial, canal, and other purposes, does not fall much short of 2,000,000 of acres, or one-third part of the entire surface of the state.

The grants in the other states have scarcely been less. Those for school and academic purposes have been the same; and nearly all of them have received large grants for the purposes of public improvement.

§ 605. 2. *Disposition by Sale*. As fast as the lands are surveyed in the manner described, and as in the discretion of the President, it may seem necessary, they are offered at public sale, at the several land offices. These offices are created by act of Congress, in every large district of surveyed lands, for the purpose of convenience to the purchaser. Attached to each is a Register and a Receiver; two officers, whose duty it is, as their name imports, to register the sale of lands and receive the moneys. The sales are made—1st, by offering a large district of land in separate tracts, of sections, half sections, quarters, and eighths, at public sale. Notice of this, as to time, place, and terms, is given by a general proclamation from the President. It is then sold to the highest bidder. All the land which remains unsold, after being twice offered, may be *entered* and sold at private sale, for the *minimum price*. Formerly, the price was two dollars per acre, and a *credit* of four years given. This was found, however, to be productive of great inconvenience, and the lands, after one payment, were often *forfeited*. Now the price has been reduced to

one and a quarter dollars per acre, and cash payments. There are now forty-three land offices in the United States, and about 2,000,000 of acres sold annually, and more than that number of dollars received into the Treasury on account of lands sold.

§ 606. *Title of Occupants.* The title of the purchasers of public lands is the best that can be found. They come in as *assignees* of the *United States*, and receive a patent from the President. From the accuracy with which surveys are made, and the unsettled state of the country in which they are made, very little chance of a conflicting claim occurs; but if, by any inadvertence, such claim should arise and prevail, the purchaser is entitled to remuneration from the United States, and is allowed it to the extent of his claim.

§ 607. Some other and *temporary* departments of business come under the general supervision of the Treasury chief,—such as the settlement of insolvent cases, under the insolvent laws of the United States, and awards under indemnifying treaties with foreign nations. They do not constitute, however, any part of the regular business of the department, and therefore are omitted here.

WAR DEPARTMENT.

§ 608. This department was established by act of Congress, August, 1789.

The Secretary of War has a general superintendence over all military officers, and likewise of the Indian Department. His department is divided into the following subdivisions, viz :—

1. War Office.
2. Requisition Bureau.
3. Pension Bureau.
4. Indian Bureau.
5. Bounty Land Office.
6. Office of the General Staff.
7. Adjutant-general's Office.
8. Engineers' Department.
9. Topographical Bureau.
10. Ordnance Department.
11. Quartermaster's Department.
12. Purchasing Department.

13. Pay Department. 14. Subsistence Department.
15. Medical Department.

§ 609. 1. *War Office*. This is the office immediately directed by the Secretary, in which the correspondence of the department is kept and conducted, and every thing of a general superintending nature performed. The secretary has three clerks and two messengers.

§ 610. 2. *The Requisition Bureau*.¹ In this office the requisitions of the War Department on the Treasury are made out, and the salaries and contingencies of the department paid. It is conducted by a superintendent and clerk.

§ 611. 3. *The Pension Bureau*. In this office all claims for pensions are settled, except such as arise under the Navy Pension Law of 1799,—that giving pensions to widows of militia and volunteers, and the act of May 15th, 1828, in relation to officers who served to the end of the revolutionary war. The number of pensioners is about 15,000, and the amount paid them annually about \$1,200,000. The number, however, is continually decreasing, and in a few years, probably, a much smaller amount will be paid in pensions. In this office is a principal and four clerks.

§ 612. 4. *Indian Bureau*. To this office are referred all matters in respect to the Indian relations. The duties of this office are the correspondence in relation to Indian Affairs,—the management of the funds for the civilization of the Indians,—estimates for treaties, instructions for the application of the money, and the mode of holding treaties. Accounts for the expenditures are passed through this office.

§ 613. The relations of the government with the Indian nations have become both complicated and hazardous. From the first formation of the government, it

¹ Force's National Calendar.

has treated with them as with independent nations ; their right to the soil has been acknowledged, and payment made to them as purchase money, annuities granted, and various collateral advantages stipulated in their favour. At the same time that this was done, many tribes of them have been located entirely within the states, and over whose soil the jurisdiction of the states has extended. Hence, the hazard of a conflict between the independent rights of the Indians and the jurisdiction of the states is constantly recurring. Of the constitutional points upon this subject, we have spoken in another place.

§ 614. The *practical action* of the government with respect to the Indians may be stated under two heads :

1. Regulation of trade and intercourse with them.
2. Civilization of them.

§ 615. Of the regulation of trade and intercourse with them. The first act of intercourse with them is the holding treaties with them, and settling boundary lines. The United States have always held treaties with them, and acknowledged them as, in many respects, independent nations, and have settled the respective boundaries of the United States and them. It is therefore too late to question this point of intercourse. By section 2d, of the act of March, 1802, all persons who shall go within the Indian boundary *to hunt*, or *otherwise destroy game*, or shall drive or convey any stock of cattle to *range* on any lands secured by treaty to the Indian tribes, are subject to fine and imprisonment. So likewise, if any one go into the Indian country, and there commit robbery, or other crime, which would be punishable within the United States, he is punishable also with fine and imprisonment : and so, if one commit murder on an Indian, the offender shall suffer death. No one is permitted to reside in the Indian country, or purchase any thing of the Indians, without a license.

§ 616. No person is allowed to purchase, lease, or

take any other conveyance from an Indian, of any land within the bounds of the United States, except it be included by some treaty made by the United States with the Indians: and it is a misdemeanor for any one not employed under the authority of the United States, directly or indirectly to treat with any nation or tribe of Indians, for the title or purchase of any land held by them.

§ 617. The Superior courts in each of said territorial limits, and the Circuit and other courts of the United States, of similar jurisdiction in criminal causes, are invested with full power and authority to hear and adjudicate all such crimes and offences.

§ 618. By the same act, it is lawful for the military force of the United States to *apprehend* any person who may be found in the Indian country, over and beyond the boundary line; that is, *intruders*.

§ 619. ¹For the purpose of carrying on a proper trade with the Indians, the superintendents of Indian Affairs, and the agents, under the direction of the President, are authorized to grant licenses to trade with the Indians. These licenses are granted to citizens, and to none others. Those who take licenses are obliged to enter into penal bonds, in sums proportioned to their capital, conditioned for the due observance of the laws regulating trade and intercourse among the Indians.

§ 620. All purchases for and on account of Indians, for annuities, presents, &c. &c. are made by Indian agents and governors of territories, acting as superintendents. In all trials in which an Indian and a white man are parties, the burden of proof shall rest upon the white man, in every case in which an Indian shall make out a presumption of title. For the purpose of superintending the Indian intercourse, an officer is appointed by the President, called a Superintendent of Indian Affairs.

¹ Act of May 6, 1832.

§ 621. ¹*Licenses* to trade with the Indians are not granted to any but *citizens*. *Foreigners*, who go into any of the Indian territories within the limits of the United States, are subject to fine and imprisonment.

§ 622. 2. Civilization of the Indians. For this object, the United States have from time to time used various means. To *promote civilization* among the friendly Indians, and to secure the continuance of their friendship, it was enacted, that the President of the United States might furnish them with domestic animals, implements of husbandry, goods, and money at his discretion; and might also appoint such persons, from time to time, to reside among them, as he may think fit.

§ 623. The President² was also authorized to take such measures as he may think expedient, to prevent the vending or distributing *spirituous* liquors among the Indians.

§ 624. In addition to these enactments, Congress, by the act of March 3d, 1819, authorized the President to employ persons of good moral character to instruct them in the mode of agriculture suitable to their condition, and for teaching them reading, writing, and arithmetic, to be governed by such rules and regulations as the President may prescribe.

§ 625. The United States have expended much money and employed many agents upon the objects contemplated by these provisions, but little progress has ever been directly made in the civilization of the Indians. The frontier tribes have always retained their original barbarism. The Cherokees, Choctaws, &c. who have continued within the bosom of the white settlements, have made some little progress in the arts of civilized life.

§ 626. 5. Bounty Land Office.³ This is an office in

¹ Act of 1816.

² Act of March, 1802, Sect. 21.

³ Fosse's

National Calendar.

which claims for military bounty lands, originating in the Revolutionary and late war, are examined, and from which military bounty land-warrants issue.

§ 627. 6. *Office of the General Staff.* This is the office of the Commander-in-Chief. His duty is to command the army; to arrange the military force in the best manner; to superintend the recruiting service; to order courts-martial, and decide in all cases except those in which life is concerned, or the commission of an officer.

§ 628. 7. *Adjutant-general's Office.* In this office are deposited the records which refer to the *personnel* of the army from the earliest period of the government. In this office, military appointments and commissions are made out and registered; enlistments recorded; monthly returns of the troops received and preserved. All orders from Head Quarters, and all regulations and general orders of the War Office, are communicated through the Adjutant-general. In this office, the annual returns of the militia, arms, accoutrements, &c. are deposited, as likewise the appointments and commissions of the officers of the militia of the District of Columbia are registered and distributed.

§ 629. 8. *Engineer Department.* The chief of the Engineer Department is stationed at the seat of government, and directs and regulates the duties of the corps of engineers, and of such topographical engineers as may be attached to it; he is also inspector of the Military Academy, and charged with its correspondence.¹

§ 630. 9. *Topographical Bureau.* This Bureau has charge of all topographical operations, and surveys for military purposes and for internal improvement, and of the maps, drawings, and documents in relation to those duties.

§ 631. 10. *Ordnance Department.* The senior officer of Ordnance is stationed at the seat of government, and charged with the general superintendence of its duties.

¹ Force's National Calendar.

§ 632. 11. *Quartermaster's Department.* The object of this department is to insure the *supplies* and facilitate the *movements* of the army. The Quartermaster-general is stationed at Washington, and has, under the direction of the Secretary at War, the exclusive control of all the quartermasters, and assistant quartermasters, and of all the officers and agents acting for the department. It is the duty of the Quartermaster-general and his agents to provide quarters and transportation for the troops, and transportation for military stores, camp equipage, provisions, &c. &c.; provide for opening and repairing roads, bridges, &c. He purchases all forage, fuel, stationary, &c.; provides all horses, wagons, boats, and materials for building barracks, hospitals, stables, and bridges. Officers of the Quartermaster's department make all contracts for the supplies of the army, and have the right to make payment for all supplies, which by regulation they have the right to contract for. No officer is allowed to be concerned, directly or indirectly, for himself or others, in any contract with any department of the government, nor in the purchase of any claim on government. Whenever private grounds, buildings, or property are occupied by the troops of the United States, the Quartermaster must make reasonable compensation to the proprietor. Every officer in the Quartermaster's department gives bonds to the United States, conditioned for the faithful performance of his duty.

§ 633. 12. *Purchasing Department.* The Commissary-general of Purchases purchases¹ on the orders and estimate of the war department, all clothing, camp equipage, saddles, and all articles required for the public service of the army of the United States, except such as are ordered to be purchased by the Ordnance, Quartermaster's, Subsistence, and Medical Departments.

§ 634. 13. *Pay Department.* The Paymaster-

¹ Force's National Calendar.

general is stationed at the seat of Government, and is charged with the military responsibilities of this department in all its details. The subordinate officers of the pay department are subject only to the orders of the Paymaster-general and Secretary at War. The troops are paid every two months, or as near it as is possible.

§ 635. 14. *Subsistence Department.* The Commissary-general of Subsistence makes estimates of expenditures for his department, purchases subsistence for the army, makes payment to contractors, arranges his assistants, &c.

§ 636. 15. *The Surgeon-general*—is stationed at Washington, and is the director and accounting officer of the *Medical Department*. He issues all orders and instructions relative to the professional duties of the medical staff, and receives such reports from them as is necessary to the proper performance of their duties. He receives quarterly reports of the sick from each officer, with such remarks as may explain the nature of the diseases of the troops and the practice adopted. He receives from every surgeon and assistant surgeon having charge of public property, semi-annual returns of the same, and also annual requisitions for the supplies required for each hospital. It is his duty to make all such returns to the Secretary at War as may be necessary to explain all the concerns of the department under his charge, with such remarks relative to the improvements in practice and police, clothing, &c. of the army, as may seem to be required for the preservation of health, and the good of the public service.

NAVY DEPARTMENT.

§ 637. The Navy Department was not created until some time after the departments of State, War, and Treasury were in efficient operation. The office of Secretary of the Navy was erected by the act of the 30th of April, 1798. He has a general superintendence of the naval establishment, and issues all orders to the navy. He is by

usage a member of the cabinet, and holds his office at the will of the President. The secretary is assisted by eight clerks and two messengers.

§ 638. By the act of February 7th, 1815, a Board of *Navy Commissioners* was established. The board consists of three post-captains, who have power to adopt such rules and regulations for the government of their meetings as they may think expedient; and the board, so constituted, is attached to the office of the Secretary of the Navy, and under his superintendence discharges all the ministerial duties of said office relative to the procurement of naval stores and materials, and the construction, armament, equipment and employment of vessels of war, as well as all other matters connected with the naval establishment of the United States. And the board appoint their own secretary, who keeps a record of their proceedings, subject at all times to the inspection of the President of the United States and the Secretary of the Navy.

§ 639. Six clerks, a draughtsman, messenger, and superintendent of building are employed by the Board of Navy Commissioners. In addition to the above officers, attached to the department and to the Navy officers there are twelve Navy Agents, seven Naval Storekeepers, and eight Naval Constructors.

POST-OFFICE DEPARTMENT.

§ 640. The Post-office Department has been in operation since the first organization of the government; but the act which gave it the present form and constitution was passed April 30, 1810. By that act the General Post-office is placed under the *direction* of a Post-master-general. He has two assistants, and such clerks as are necessary to perform the business of his office. He establishes post-offices, and appoints such post-masters, as he may deem expedient, on *routes* established by *law*. He gives all persons employed in his

department *instructions* upon their duty. He provides for the *carriage* of the *mail* on all such post-routes as are established by law. When he thinks proper, he may designate the route, where there are more than one, between places designated by law for a post-road. He requires the accounts, vouchers, and balances of the several postmasters quarterly. He pays all the expenses arising from the conveyance of the mail, the collection of the revenue of the department, and other expenditures; he prosecutes offences against the department; he renders a quarterly account of the receipts and expenditures to the Secretary of the Treasury; he superintends all the business of the department, and in case of death, resignation, or removal, is succeeded by the senior assistant till a successor is appointed.

§ 641. The Postmaster-general, and all in the general post-office, as well as all who have the care, custody, or conveyance of the mail, must take an *oath to perform all the duties required of them, and abstain from every thing forbidden by them*, in relation to the post-offices and post-roads within the United States.

§ 642. To place the conveyance of the mail entirely under the supervision of the postmaster-general, all private mails are forbidden, and all persons are prohibited, directly or indirectly, from conveying letters from place to place.¹

§ 643. The expenditures of the Post-office Department are paid from its receipts in postage. In this respect this department differs from all the others. Its funds do not make up a part of the general revenue of the country, nor are its expenses paid from it. Its receipts and its expenditures are kept within itself. In this manner, as its funds extended, new mail routes have been established; the mail greatly expedited on the old ones, and their frequency increased. Indeed,

¹ Act of April 30, 1810, section 16.

the great increase of postage and post-routes show, more than any other, the augmentation of numbers, business, wealth, and intelligence of the people.

§ 644. The Postmaster-general is assisted by *two assistants*, an examiner, register, solicitor, three book-keepers, and *sixty-two clerks*.¹

§ 645. The business of the office is divided into three divisions; at the head of the 1st is the First Assistant; of the 2d the Second; of the 3d the Chief Clerk.

§ 646. 1. Of the First Division. Under this division are included the Book-keeper's Office, Solicitor's Office, Pay Office, Examiner's Office, and Register's Office. The senior assistant is charged with duties appertaining to the Finance Department; with the supervision of cash disbursements; with the comptrolling of incidental expenses, when audited by the chief clerk; with examining and reporting to the postmaster-general, when deficient, the deposits of the weekly, monthly, and quarterly proceeds of the depositing post-office.

§ 647. *Book-keeper's Office.* The principal book-keeper² is charged with five ledgers, containing 3000 post-masters' accounts, the contractor's accounts for the same region, as well as the general accounts of the department, a journal and abstract of the day-book for the same district. 2. The second book-keeper is, in like manner, charged with four ledgers, containing near 3000 postmasters' accounts, the contractors' accounts for the same section, a journal, and a day-book, as before. 3. The third book-keeper is charged with four ledgers, containing 2500 postmasters' accounts, and other accounts and books, as before.

§ 648. *Solicitor's Office.* The solicitor has the final settlement of all accounts, and the collection of all balances due, the commencement of suits, and the corre-

¹ *Forbes's National Calendar*, 137.

² *Idem*, 136.

spondence with the United States Attorneys and others in relation thereto. Also, the statement of postmasters' accounts, and the correspondence on questions of difference with them.

§ 649. *Pay Office.* It is the duty of the pay-clerk to examine the accounts of all contractors for the transportation of the mail; ascertain the annual and quarterly payments to be made on their contracts; issue the drafts in their favour, on the postmasters belonging to their routes; to keep the pay-books of the pay due, of the sums drawn from the post-offices, and of the drafts and checks transmitted, and furnish certificates of the sums required to the assistants. He is also agent for the payment of the officers and others of the department; he has *four* assistant clerks.

§ 650. *The Examiner's Office.* The chief examiner is charged with the opening, auditing, and examining of all post-masters' accounts; notifying and reporting all delinquents; with notifying postmasters of the errors in their accounts; receiving and depositing remittances, and returning those not receivable.

§ 651. *The Register's Office.* The chief register prepares all the accounts of the department for the Treasury, with their proper vouchers, with a general account current of the transactions of the department, and superintends the copying and adjusting the accounts for the Treasury. The register is assisted by three assistants and three clerks.

Second Division.

§ 652. This division is under the direction of one of the Assistant Postmasters-general. His duties are to take charge of the establishment and regulation of post-offices; the appointment, supervision, and instruction of postmasters; the security of remittances by mail; the examination of mail routes, to determine the location of

new offices; the reporting of applications and complaints to the postmaster-general.

§ 653. *Office of Appointments and Instructions.* This is attached to the second division, and has nine clerks; of these four are *corresponding clerks*, whose duties consist in the examination and endorsement of memorials, letters, &c. &c. One clerk, whose duty it is to prepare the letters of appointment, discontinuance, bonds, &c. &c. One clerk, who writes notices of appointments, change, &c. One letter-book clerk, who records and despatches the letters from this office; and two other clerks.

§ 654. *Dead Letter Office.* This office is under a superintendent and four clerks. The superintendent examines dead letters containing articles of value; enters and numbers them, and transmits them to the owners: in other cases he numbers them, enters them, and files them. He also corresponds on the subject. Letters that have no enclosures are burnt.

§ 655. *Office of Mail Depredations.* To this office is assigned the business of attending to all cases of mail losses, and depredations, &c. &c.

Third Division.

§ 656. The Chief Clerk is charged with the duties of this division.

Office of Mail Contracts. The business done in this branch is always prepared, and submitted to the postmaster-general for his examination and decision. There are four *corresponding clerks* in this department; one *contract clerk*; one *route-book clerk*; two *letter-book clerks*; one *fine clerk*.

To the Post-office Department are attached two watchmen, and three messengers.

MINT DEPARTMENT.

§ 657. The Mint of the United States was established by the act of April 2d, 1792.

The officers of the Mint are a Director, Chief Coiner, Assayer, Engraver, Melter and Refiner,¹ and a Treasurer, and as many clerks and workmen as are necessary. The duty of the *Director* is to *superintend* and manage the business, and all the officers and persons employed in it. The *Assayer assays* all the metals which require it, and delivers them to the chief coiner. The *Chief Coiner coins* them in such quantities as the director requires. The *Engraver* sinks and prepares the *dies* for the coin, with the proper devices and inscriptions. The *Melter* and *Refiner* take charge of all copper, and silver or gold bullion, delivered out by the *Treasurer* after *assaying*, and reduces the same into bars and ingots for the rolling mills, and then delivers them to the *coiner*, or *treasurer*, as the *director* deems expedient. The *Treasurer* receives and gives receipts for all metals which may be lawfully brought to the mint to be coined; and for ascertaining their quality, he delivers from every parcel so received a number of grains to the assayer, who assays such of them as require it.

§ 658. Every officer and clerk of the Mint, before he enters upon the duties of his office, takes an oath or affirmation, before some judge of the United States, *faithfully and diligently to perform the duties thereof*. The Assayer, Chief Coiner, Melter and Refiner, and Treasurer, give bonds to the Secretary for the faithful and diligent performance of their several duties.

§ 659. Every person is allowed to bring gold and silver bullion to the mint to be coined, and it is assayed and coined as soon as practicable after it is brought; if it is of the standard of the United States it is

Act of March 3d, 1795.

coined free of expense ; but the treasurer is not obliged to receive silver in less quantity than two hundred ounces, nor gold less than twenty ounces, when less than the *standard value*. When it is of less than the standard value, it is coined at the expense of the owner.

2. OF THE LEGISLATURE.

§ 660. The *operation* of the Legislative branch of the government consists chiefly in its *organization*. Congress, as we have seen in the 1st Article of the Constitution, consists of two branches, the House of Representatives and the Senate. The organization of these bodies respect, 1st, their *officers* ; 2d, their *committees* ; and 3d, their *rules*.

§ 661. 1st, Of their Officers ; these are, the presiding officer (in the House, the Speaker, and in the Senate, the Vice-President),—the Clerk,—Sergeant-at-Arms, and Doorkeeper. When the House meet at the seat of government, they usually appoint the oldest member present Chairman ; after that, they proceed to the election of a Speaker, a majority of all the votes present being necessary to a choice ; after this they elect a Clerk,—Sergeant-at-Arms, and Doorkeeper. When these officers are elected, and the members sworn, which they are by the Clerk, the House is said to be *organized* and ready to do business. In the Senate, the Vice-President takes the chair, or if not present, a president pro tem, is chosen : then the Clerk and other officers are chosen, as in the House.

§ 662. The power and duties of the speaker are to preside and keep order in the House ;—to appoint committees¹ unless otherwise specially directed by the House ;—to sign all acts, addresses, and joint resolutions of, and all writs warrants, and subpoenas, issued

¹ Jefferson's Manual, 157.

by order of, the House, shall be under his hand and seal, attested by the Clerk; he has power to clear the galleries when there is disturbance; he puts all questions to the House, and in case of ballot, is entitled to vote; in other cases he is not, unless the House is equally divided, or his vote given in the minority would make it equal.

§ 663. The duty of the *Clerk*¹ to make, print, and deliver to each member, at the commencement of every session of Congress, a list of the *reports* which it is the duty of any officer to make to Congress, referring to the page of the journals in which it is contained; it is his duty to keep the journals of the House, and at the end of each session to send a printed copy thereof to the Executive, and to each branch of the Legislature of every state; he must note all questions of order, and place them at the end of the journal of each session.

§ 664. The duty of the *Sergeant-at-Arms*² is to attend the House during its session, to execute its commands, and all such process as shall be directed to him by the Speaker.

§ 665. The duty of *Doorkeeper* is explained by his title.

§ 666. The chief *business* of legislative bodies is done by their *committees*,—to whom all matters of business, requiring investigation and consideration, are first referred; and by whom a report is made upon the subject, which report is the topic of consideration with the House. Committees in the *House* are appointed by the *Speaker*, in the *Senate* by *ballot*. In the House they consist of *seven* members each; in the Senate of *five*.

§ 667. The committees are formed by arranging all the chief subjects of importance into classes, with an appropriate title, and to each appointing a separate com-

¹ Jefferson's Manual, 173.

² Idem. 165.

mittee. These subjects and classes are enumerated in the rules and orders of the Houses, and, with little variation, are the same in both. By the 7th Sect. of the 1st Art. of the Constitution, it is provided, that all *bills for raising revenue* shall originate in the House of Representatives; hence the House have a committee which the Senate have not, styled *The Committee of Ways and Means*. This committee is one of the most important parts of the machinery of legislation, and of the government itself; for in it are investigated all the moneyed affairs of the nation, and by it are digested and reported the various plans of revenue and finance for the support and credit of the government.

§ 668. The principal committees in either House are, The committees on Foreign Relations, on Commerce, on the Judiciary, on Military Affairs, &c.

§ 669. These committees, with several others, not enumerated, are called *standing committees*: besides these there are *select committees*, appointed for specific objects, and only for the particular occasion; these are appointed, either from the great importance of the topic under consideration, or the particular desire of members having them in charge. Besides these, the whole House, at times, resolves itself into a committee, called the *committee of the whole*. The object of this is to obtain greater freedom of debate: when in committee of the whole, the speaker does not preside, but a *chairman* appointed for the occasion; nor do the *rules* of the House govern, but simply order is preserved, as in common deliberative assemblies. When the committee of the whole have finished their discussions, they rise, and like other committees, report to the House, the Speaker resumes the chair, and the members vote in the House upon the acceptance or rejection of the report. In this manner important subjects are more freely discussed, and more deliberately decided upon than if they passed merely through the House.

§ 670. The regular and constant business of the House is concocted first in the standing committees; for example, the appropriation bills for support of government are drawn up in them; bills for claims, for the sale and grant of lands, &c.

§ 671. The order of business is as follows; after Congress is *organized*, the President's Message is received and read, with the accompanying documents; then such part of it as relates to our intercourse with foreign nations, is referred to the committee on *foreign affairs*: so much as relates to the army, military academy, &c. &c. to the committee on *military affairs*, and so on of each subject: these committees examine the recommendations made by the President and the respective departments, and report such bills as they think necessary and proper: on these Congress decide by accepting or rejecting them.

§ 672. If any member wish to obtain the action of the House upon a particular subject, he must do it in one of the following modes:—1st, by resolution; thus, if it is desired to obtain the opinion of the House upon a particular point, a member introduces a resolution, "Resolved so and so;" upon this resolution the House act, and its sentiment upon that subject is immediately obtained; again, if it is desired to obtain the report of a committee, or a bill upon a given subject, a resolution is introduced, directing the committee to report, or otherwise, and the House at once pass it or not, at its discretion; calls for information upon the departments are likewise made in this manner. 2d. Another mode is that of obtaining leave to bring in a bill; when a subject does not regularly come before the committee, or the instant action of the House is required, this is sometimes adopted. Regular bills are brought in by the committees, and for a member to bring in a bill, the House must grant leave.

§ 673. The order of daily business is, 1st. As soon

as the journal of the preceding day is read,¹ the Speaker calls for *petitions* from the members of each state and territory;² when these petitions are presented and disposed of, *reports* from the standing and select committees are called for and disposed of; to these subjects, and to that of *resolutions*, only one hour a day is allowed. After this is done, and the Speaker has disposed of communications on his table, he proceeds to call the *order of the day*, which consists of unfinished business, in regular order, and subjects particularly set apart for that day.

§ 674. In carrying a bill through the House, there are certain steps which must be taken before the final decision is made; and there are certain rules which must always be observed while a subject is under discussion:—Thus, every *bill* must be *read*³ *three* times previous to its passage; and each reading must receive the formal sanction of the House. No bill can be twice read on the same day, without special leave of the House.

§ 675. The *first reading* of a bill is for information, and if opposition be made to it, the question is put by the Speaker, "Shall this bill be rejected?" If no opposition be made, or this question is rejected, the bill goes to its second reading without a question. On the *second* reading of the bill, it may be either *engrossed* or *committed*: if committed, the House determines whether it shall be a select committee, or a standing committee, or a committee of the whole: if to a committee of the whole, the House determine on the day. If the bill be *engrossed*, then the House appoint a day upon which it shall be read a third time: after the bill is read a third time, the question is upon its final passage.

§ 676. When a bill shall pass, the Clerk must certify

¹ Jefferson's Manual, Rule 16, of the House.
Rule 17.

² Idem.

³ Idem.,

it, noting the day of its passage at the foot. There are various rules to be observed during the discussion, but we shall notice only those which have a direct effect in facilitating or retarding the business of the House.

§ 677. The chief of these are the rules in respect to motions, by which the business before the House is frequently very much accelerated or retarded, even against the wishes of the majority. The principal motions, and the order of their precedence, is as follows; the motion to adjourn,—to lie on the table,—for the previous question,—to postpone to a day certain,—to commit or amend,—to postpone indefinitely. The motion to adjourn takes precedence of all other questions; after 4 P.M. it is always in order. The motion to lay on the table has next precedence; this motion, if it succeeds, gives the subject the *go-by*, till it is formally recalled by a motion to take it up; this, unless the majority for the measure is strong, is difficult to be done. The previous question is a formidable motion in the hands of a majority; it can only be called for by a majority, and precludes all debate. It is used by the majority to press a question when measures are taken by the minority to delay and protract the action of the House upon the subject in hand; or when the debate becomes vexatious, or improper.

§ 678. Upon all questions where there is any opposition made, the *yeas* and *nays* are taken; that is, the members vote alphabetically, in the affirmative or negative, upon the question before them. The *yeas* and *nays* may always be demanded by one-fifth of the members present.

§ 679. The rules and usages observed by parliamentary bodies are all favourable to deliberate and prudent legislation, and to the just rights of the minority. If legislation could be hurried off as rapidly as ordinary business, the majority would do many acts their delib-

¹ Jefferson's Manual, Rule 29.

erate reason would disapprove, and be impelled to much oppression upon the minority. As it is, by means of rules and restrictions, the forms, if not the reality, of justice and decorum are observed.

§ 680. The rules for the Senate are nearly the same with those of the House : indeed, substantially, all parliamentary bodies in this country observe the same rules.

§ 681. After a bill has passed, it is carefully engrossed by the Clerk, and sent to the other House by a proper person. When a bill has passed both Houses, it is duly enrolled on parchment, by the Clerk of the House of Representatives, or Secretary of the Senate, before it is presented to the President. After they are enrolled, they are examined by a joint committee of the Senate and House of Representatives, who carefully compare the enrolment with the engrossed bills, and correcting any errors that may be discovered in the engrossed bills, make their report forthwith to the Houses. After examination and report, each bill is signed in the respective houses, first by the Speaker of the House of Representatives, then by the President of the Senate, and after being thus signed, is presented by the committee to the President of the United States for his approbation ; it being endorsed on the back of the enrolment in which House the same originated. No bill that has passed one House is sent to the other for concurrence within the three last days of the session.

§ 682. The signature of the President is affixed to all bills which meet his approbation, and this completes the last act of *practical legislation*. When bills are thus completed, they make a part of the laws of the nation, and from the day mentioned in the bill, take effect accordingly.

3D. OF THE JUDICIARY.

§ 683. By Art. 3d, Sect. 1st, of the Constitution, the Judicial power of the United States is vested in a *Supreme Court*, and such *inferior courts* as Congress may appoint. By Sect. 8 of Art. 1, Congress have power to make all laws *necessary* and *proper* to carry these provisions into execution. Accordingly, in September, 1789, Congress passed the Judiciary Act, which has since been frequently amended, organizing the Supreme and Inferior Courts, and prescribing their mode of action.

§ 684. The courts established are, first, a *Supreme Court*, consisting of a chief-justice and seven associates ; 2d. A District Court, consisting of one judge for each district, of which there are many ; 3d. A Circuit Court, consisting of one judge of the Supreme Court, and the district judge in connection.

§ 685. Under other heads, we have seen what was the jurisdiction of these courts : we are here to learn in what *mode they operate*, and *what functions* they perform. These may be considered, 1st, as to the *objects* which courts effect ; 2dly, as to the *means* of effecting them ; and 3dly, as to the mode by which their decisions are carried into execution.

§ 686. 1. As to the *objects* of Courts of Justice. The general object of all courts is to *administer justice*.¹ It is to enforce right, and punish or repress wrong. Thus, for example, if James has a right to a field, which Paul has taken and keeps, James may appeal to the *Court*, and that will give judgment against Paul, and restore the field to James ; or if Paul being rightfully in possession of the field by a lease for cultivation, commits waste upon it by cutting timber trees, James may appeal to the court ; and it will *restrain* Paul from cutting them ; or again, if Paul steals the goods of James, the

¹ 3 Blackst. 24.

court will punish Paul and restore the goods. Thus, as the general object of the Executive Department is to *execute* the laws, so that of the Judiciary is to pass judgments upon infringements of them, and carry these judgments into effect.

§ 687. The objects of the United States Judiciary are, in conformity to the United States Laws, of the same general nature, but different in extent and relations from those of the states. These have, however, been defined chiefly under the jurisdiction of the United States Courts. The objects of the State Judiciaries are the enforcement of municipal rights of every description, and the punishment of state offences; while the United States Judiciary concerns chiefly the enforcement of municipal rights only of a certain character, offences against the laws of the United States, and maritime law.

§ 688. 2. But to enforce rights, and punish crimes, courts must have *the means* to bring the parties before them, and to ascertain the truth of the case. These means consist, 1st, of the *officers of the court*; and 2dly, of *process*.

§ 689. 1st. The officers of the United States Courts consist of clerks, marshals, attorneys, and reporters. The duty of *clerks* is to keep, in books prepared for that purpose, an exact record of each case which comes before the court, with all the proceedings which have taken place upon it at each successive stage. This record is kept carefully in the public offices, and is of such solemn import, that when a cause has once been decided, it cannot be impeached, but is conclusive against the parties to it, their heirs, and successors for ever. By Sect. 7th of the Judiciary Act, the Supreme Court and the District Courts have power to appoint their own clerks, and the clerk of the District Court is also clerk of the Circuit Court.

§ 690. *The Marshal* is what is termed the *ministerial*

officer of the court, that is, he *ministers or acts for* the court in all its executive proceedings. Thus, if the court directs a person to be brought before them, the marshal sees it done by serving the order of the court upon him, and if he will not come voluntarily, compelling by force; for which purpose he can call upon all bystanders, and others for assistance.

§ 691. The general duty of the marshal¹ is to attend upon the District and Circuit Courts when sitting, and upon the Supreme Court in the district in which that court shall sit; and to execute all lawful precepts directed to him, and issued under the authority of the United States. The marshal has power to appoint deputies, who are removable from office at the pleasure of the judges of the District and Circuit Courts. For the faithful performance of his duties he is bound, with securities, in a large sum. In all cases where the marshal or his deputy is a party, the writs or precepts are directed to some disinterested person, who has power to execute them. The marshal sometimes has other duties assigned him by law,—but his general and proper duty is that of executing the process of the court.

§ 692. Attorneys at Law are persons supposed to be learned in the law, and as such, are appointed by the courts to practise law, and conduct suits within their jurisdiction. As they are appointed by the courts, they are removable at the pleasure of the courts. They are considered officers of the courts, and amenable to them. The requisites to license a person to practise law in the several states are enacted by statute: in the United States Courts, any one may practise who can practise in the courts of highest judicature in the state where he resides.

§ 693. A Reporter is likewise an officer of the court.

¹ Judiciary Act, Sect. 27.

He is some one licensed by the court to report and publish their judicial decisions and opinions. Doubtless, any one can report the proceedings of a court of justice; but they would not have weight or authority unless done under the sanction and inspection of the courts. Reporters are now appointed, by nearly all the courts of highest jurisdiction in the several states. These reports are used as precedence and authorities upon which to decide similar cases. They are constantly cited at the bar, and make up the largest portion of a lawyer's library. A learned judge has said, that "the first and greatest lesson a judge has to learn is *to abide by precedents*." The reports of decisions in the Supreme Court of the United States have acquired an immense authority, both from its being the tribunal of ultimate resort, and from the learning and ability of its judges.

§ 694. *Of Process.* ¹Process is the method taken by the law to compel a compliance with its demands: as such, it comprehends all the written orders of the courts, from the commencement of a suit till its termination by execution of the judgment.

§ 695. Process is of two kinds; *Mesne* and *Final*. Mesne Process is all that process which is issued prior to the judgment,—such as writs to bring the parties before the courts, summon juries, witnesses, &c. Final Process is all that process necessary to carry the judgment of the court into execution, as the writ of *capias ad satisfaciendum*, to take the body for satisfaction, and the writ *levari facias* to levy on lands. The distinction between mesne and final process being made by the judgment: all before that being Mesne, and all after Final Process.

§ 696. The terms *writ* and *process* are in the American practice nearly confounded, but in England the *writ* means what is called the *original*, or the writ issued

¹ 3 Blackstone's Comm. 269.

to commence, or found an action at law. Here a writ is a *mandatory letter* from the court, directing parties and persons to be brought before it, and things to be done.

§ 697. By the act of May, 1792,¹ all writs and processes issuing from the Supreme or Circuit Court shall *bear teste*, that is, be signed and issued as of the chief justice; and all writs and process issuing from the District Court, shall bear teste of the judge of such court, which writs and process shall be under the seal of the court, and signed by the clerk thereof.

§ 698. The *forms* of writs, and executions, except their style, and that of other process, in suits at Common Law, are the same as are used in the Supreme Court of each state respectively. What these forms and writs are will be seen under the head of the Practical Operation of the State Judiciary, Book II. chap. II.

§ 699. 3d. *Of the mode in which the decisions of courts are carried into effect.* Much of this has already been explained under the head of Process, but the executive part is yet to be explained.

§ 700. The judgments of a court may have two general objects; 1st, to *punish* for crimes and *misdeemeanours*; or, 2dly, to obtain a debt.

§ 701. 1st. The punishment of crimes may be either by imprisonment, or death. Both are executed under the order of the court, by the marshal, who confines the prisoners in the place assigned them, or executes them according to the sentence. In each county is erected a public jail, for the purpose of confining prisoners. Almost every state, also, has a Penitentiary, which is a general jail for the state.

Contempts against the authority of the court are *misdeemeanours*, and are punishable at the discretion of the court, by fine and imprisonment.

§ 702. 2d. *A judgment*, whose object is to obtain a

¹ 1 Story's Laws of United States, 257.

debt, may be carried into effect in three different modes.

1. By a levy upon *goods* and *chattels*. This writ is directed to the proper officer, whether marshal or sheriff, and is immediately levied upon the goods and chattels of the defendant. These goods are then advertised for sale, at a given day, and sold for the benefit of the plaintiff, who, after deducting costs, receives the proceeds to the amount of his debt, and if there is not enough, execution is issued against other property.
2. Another writ is levied upon *lands* and *tenements*, which is executed in the same manner by the proper officer, and the lands are then appraised according to the laws of the state in which they lie, and sold at public auction. The process of the United States Courts is the same as that of the state in which the court is held.
3. Another writ is the *capias ad satisfaciendum*, which is levied upon the *body*. Under this writ, the marshal or sheriff takes the debtor to jail, and there confines him till the debt is paid, or he is relieved by the insolvent laws of the states.

§ 703. These are the principal modes in which courts carry their decisions into effect. In the Court of Chancery or Equity, there are also some others peculiar to those courts. For example, a Court of Chancery, having ascertained that a conveyance ought to be made by one party to another, may decree that it be made, and give it the same effect as if it had been done. In general, however, the remedies above mentioned are the principal ones upon which reliance is placed in the punishment of wrongs, or the attainment of rights.

BOOK II.

CHAPTER II.

PRACTICAL OPERATION OF THE STATE GOVERNMENTS.

§ 704. To understand the difference between the operations of the State and United States Governments, we must remember that the latter has for its objects *national concerns*,—the former *municipal*; the latter chiefly *external*,—the former wholly *internal* affairs. In this difference of objects consists the chief difference of operation. In the *mode* of operating, there is very little difference. State Governments, like the National, act through the great channels of Legislative, Executive, and Judicial functions.

1. The *Legislative functions of State Governments.*

§ 705. We have already seen what powers are held by the state legislatures, in relation to the laws and institutions of the states. Here we must consider principally the *mode of their action*. The legislatures of the states are organized in the same manner, as the national legislature, and are governed by the same rules of precedence: indeed they are all derived from the rules of the British Parliament, except in cases where the po-

ular circumstances of our government render them inadmissible.

§ 706. There is a Speaker, Clerk, Sergeant-at-Arms, and Doorkeeper, who have the same powers and duties as those of the national legislature.

§ 707. In the same manner, the chief business of the legislatures is performed by the committees, who are likewise constituted in the same manner, being generally appointed by the speaker; in the legislatures of the states, there can, of course, be no committee of *foreign affairs*; for the states have no foreign affairs to transact.

§ 708. In some of the states, as in Pennsylvania, the governor has the same veto upon the passage of bills as is vested in the President of the United States; and in others, as in Ohio, the majority of the legislature can pass a law without the governor's assent. In fact, in Ohio, bills are not even signed by the governor, but only by the Speaker of the House and the Speaker of the Senate.

2. THE STATE JUDICIARY.

§ 709. The operations of the State Judiciary vary but little from those of the National Courts. In respect to their officers, there is a slight difference. Instead of a Marshal, the ministerial officer of the state courts is the Sheriff of the county.

The Sheriff is the ancient Common Law officer of the court. His office is a Saxon institution. He was originally the deputy of the earl who had the command of the county, and is now the chief officer of the county.¹ They were originally, in most cases, chosen by the people, and in most of the states are still so chosen.

§ 710. The Sheriff is first a conservator of the peace, and is bound to apprehend and commit to prison all persons who break, or attempt to break the peace. He

¹ 1 Blackstone, 339.

is also bound to apprehend persons who have committed crimes, and for these purposes he is vested with power to call to his assistance the *posse comitatus*, i. e. the power of the county. 2. He is the *jailer* of the county, and is bound to keep all prisoners in proper and safe custody, and to provide for them; for which purpose he is allowed his expenses and fees.

3. The Sheriff is the ministerial *officer* of all courts having jurisdiction within the county. He must serve all writs, make escorts, take bail, summon and return juries, and carry the judgment of the court into execution.

§ 711. To execute these duties the sheriff has under him various inferior officers, as deputies, jailers, &c.

§ 712. In the counties of the different states, there is also another officer, whose duties are partly judicial and partly ministerial. This officer is the Coroner. His duty is, 1st, in case of all deaths, supposed to be by violence, to call a jury to inquire into the matter, summon witnesses, and return the verdict into court. 2dly, In case of vacancy in the office of Sheriff, the Coroner performs his duty.

§ 713. The states have also a large class of judicial officers, who are unknown to the Federal System, except in the District of Columbia. These are Justices of the Peace. These officers are in every way important, and their duties constitute a large part of the judicial business of society.

To give a view of these, we will select the office and duties of a Justice of the Peace in Ohio. Their jurisdiction varies somewhat in the different states, but their general duties are the same.

§ 714. In Ohio, the jurisdiction of justices, in civil cases, is limited,

1. In territory, to the township wherein they are elected;

2. In amount, to one hundred dollars ;
3. But in *confession* of judgment, without process, to two hundred dollars.
4. They have power to administer any oath required by law to be taken or administered ;
5. They may issue process for witnesses in any cause or suit pending before them ;
6. They have power to take acknowledgments of deeds, mortgages, and other instruments of writing.
7. The three last classes of powers are co-extensive with the county.

§ 715. The jurisdiction of Justices in criminal cases is,

1. Co-extensive with the county wherein he was elected ;

2. He is conservator of the peace therein ;

3. He is authorized and required to cause every person, charged with the commission of a crime or breach of the law, to be brought before him for examination.

4. He is empowered, and it is his duty to inquire into the complaint, and cause every person so charged either to be committed to jail, discharged, or recognised to appear at the next term of court, according to the nature of the case.

5. It is his duty to recognise all such witnesses as he may consider necessary to the further prosecution of the cause, to appear before the next term of court.

6. He has power to *fine*, for several misdemeanours and criminal offences described by statute, and in such cases, after entering judgment, he may issue execution for the fine and costs.

§ 716. The ministerial officer of the Justice's Court is the Constable.

1. They have power to execute process of subpœna, in civil cases, throughout their respective counties ;

2. They must moreover execute such other legal process, in civil cases, as may be directed to them.

3. It is their duty to apprehend and bring to justice felons and disturbers of the peace, to suppress riots, and keep and preserve the peace within their respective counties.

4. And if any person charged with the commission of any crime or offence shall flee from justice, it shall be lawful for any constable of the county where such crime is committed, and it is his duty, to pursue and arrest such fugitive in any other county of the state.

§ 717. In addition to the powers of Justices of the Peace above enumerated, they have the same jurisdiction in cases concerning real estate as in personal, where the damages do not exceed one hundred dollars, and the title to real estate is not called in question. They have also power to enforce obedience to their process by attachment, &c.

§ 718. From this statement it will be evident, that a large mass of business must be transacted by Justices of the Peace. Most of the debts to be collected are below one hundred dollars, and therefore fall within a justice's jurisdiction. Almost all the criminal cases first pass under examination before the justices, so that in every respect their functions are important: in Ohio, and the majority of the states, they are elected by the people of their respective townships; in Connecticut and others, by the legislature.

§ 719. Besides the officers and courts above enumerated, the states have several gradations of municipal courts, which do not exist under the government of the United States,—but whose general operations are carried on in the same manner. Thus, in cities, there is generally a court composed of the Mayor and Aldermen, for the trial of offences against the city ordinances; again, there is generally also a Court of Quarter Sessions (in New-York, composed of the Recorder and

part of the Aldermen), for the trial of criminal offences : then there are the usual county courts, &c. In this manner any number of courts may be organized, to suit the convenience of the people ; their decisions, however, are all subject to review by an ultimate tribunal. Under the laws of the United States, we have seen there are but three orders of courts,—the Supreme, Circuit, and District Courts. But these may constitutionally be increased at the discretion of Congress.

3. THE EXECUTIVE.

§ 720. The duties of the Governors of the several states is, in general, analogous to those of the President of the United States, in those respects in which the powers of the several state governments are similar to those of the union.

1. The governor has the power to command the militia of the state, when not called into actual service by the United States ; also, he has the power of commanding the army and navy, if there be one. A state cannot maintain them in time of peace, and in time of war they have not, except so far as consists in the support of volunteers and drafted men.

2. They can require written opinions and statements from the heads of departments.

3. It is their duty to communicate such information as they may think necessary on the state of public affairs.

4. It is their duty to see the laws faithfully executed.

5. In some of the states, as Pennsylvania, they hold the appointing power almost exclusively. In others, as in New-York, they hold it in conjunction with the Senate. And in others again, as Ohio, they have none of it.

§ 721. 6. The departments of executive officers under the state governments are also organized in analogy to

those of the general government, so far as they go. The departments of War, Navy, Post-office, and Mint, do not exist under the state governments, because the states have no power over the subjects in relation to which those departments are erected. The states have a Department of State, the chief object of which is the preservation of the laws and public records, and the issuing of commissions. There is also a Treasurer, or Comptroller, whose business is the receipt, distribution, or safe keeping of the public funds.

§ 722. From this statement we see, that as national governments, the states have very little to do. All powers of a general nature are vested in the general government.

Our work is now ended. If the student of Political Law can find in it little ingenuity and less novelty, he will remember that these are not the characteristics of truth and learning in Constitutions and Jurisprudence: let him seek, rather, for what he may perchance find, the accuracy of the legal historian, and a correct delineation of our political institutions. From the study of these he must ever go forth increased in knowledge, in love of liberty, and the ardour of patriotism.

INDEX.

A.

ments	238
armment, neither House can adjourn without the other's	
ment	89, 90
tant-general	628
assador, what	548
	147-149, 153
, right of the people to bear	427
ciation of 1774	9

B.

of Attainder	234, 249
of Credit	245-248
for raising revenue, where must originate	102-104
excessive	431
ty Land-office	626

C.

station Tax	235
us	47
ter Governments	3
rgé d'Affaires	550
ens of each state, privileges of	399
enship	343-346
nies, forms of government in	2
ing money, right of	244
ipacts, or agreements with another state, or with a for-	
gn state, forbidden	272, 282
gress of 1754	7
1765	8
1775	10
how composed	35-37
time of assembling	74, 75

	sect.
Congress, power of to lay and collect taxes, imposts, and excises	111-118
power of to borrow money	120
power of to regulate commerce	121-142
power of to regulate intercourse with the Indian tribes	143-145
power of to establish rules of naturalization	146-153
power of to pass bankrupt laws	154, 155
power of to coin money	156, 157
power of to fix the standard of weights and measures	156
power of to provide for the punishment of counterfeiting	158
power of to establish post-offices and post-roads	159-162
power of to make internal improvements	162-179
power of to promote the progress of science and the useful arts	180
power of to constitute tribunals inferior to the Supreme Court	184, 185
power of to punish piracy	184-187
power of to declare war, and grant letters of marque	190-192
power of to make rules concerning captures	190, 193
power of to raise and support armies	194, 195
power of to provide for a navy	196
power of to provide for calling forth the militia	199-207
power of to exercise exclusive jurisdiction	208, 209
power of to make all laws necessary and proper to carry those powers into execution	210-212, 214
Confederation, articles of	11, 22-25
Convention of 1787	14
Contempts	83-86
Copyrights	181, 183
Constitution of the United States, page 155.	
preamble of	28-32
construction of	458-462
proceeds from the people	515
acts upon individual states	516
how put into operation	537, 538
Contracts, the obligation of	250-253, 255-270
Corruption of blood	394
Citizens of each state, privileges of	399
Constitutions of the states, how they agree	496, 497
how they differ	498-506
Commissions, authenticity of	575
Constables	716
Debts under the Confederation	414

INDEX.

271

D.

Declaration of Rights	SECT. 464
Democracy of the United States—Representative	511
Disorderly behaviour, power to punish	79, 81, 83

E.

Elections for Senators and Representatives, time, places, and manner of holding	72, 73
Election returns, and qualifications of members of Congress	76, 78
Engineer Department	629
Executive of the United States, who	286
his powers	542-544
Ex post facto law	234
Expulsion of members of Congress, what for	82

F.

Fugitives from justice	399-401
Foreign intercourse	456

G.

Government of the United States, is a Republic	508
is a Federative Republic	509
is a Democratic Federative Republic	510
foundation of it is the consent of the people	512
is a government of majorities	528-530
is perpetual	531-534

H.

House of Representatives, how composed	37
power of impeachment	50-53
Habeas Corpus, writ of	230-233

I.

Impeachment, judgment upon	70
Importation of slaves	228, 229
Imposts and duties, states forbidden to lay without consent of Congress	272, 275, 277

Importation laws	272, 273
Indian Bureau	612, 613
Indian Relations	614-616, 621-623, 625-629, 631

J.

Journal of proceedings in Congress	87
Judiciary of the United States, how constituted	329
how organized	683, 684
its object	686, 687
Judiciary, National, its means of enforcing right	688
its officers	689-693
its process	694-696
its mode of executing judgment	699-703
Judiciary, Supreme Court	325
Inferior Courts, what	326
Circuit Courts, how organized	326
District Courts, how organized	327
Compensation of judges	324, 328
Judicial power, how far it extends	329-347, 352-371, 382
Judicial functions	382
Jurisdiction, Common Law	370
Admiralty and Maritime	371-381
Justice of the Peace	713-715

L.

Land Office	594
Lands, how granted	595
mode of survey	596, 597
survey and disposition of	598-601
titles of	602, 603
Laws, preservation of	568-570
League of 1643	6, 17-19
Letters of Marque	243

M.

Monies, how drawn from the Treasury	237
Mint	662-664

N.

Navy, commissioners of	638
department of	637

O.

Order, resolution, and vote of Congress must be signed by	SECT.
the President	109, 110
Oath to support the Constitution	418-420
Ordinance Department	631

P.

Proprietary Governments	4
Patent Rights	181, 182
Priority of Payment	222-224
Presents	239, 240
President	286, 287
mode of electing	286-292, 293, 296
qualifications of	298, 299
who shall fill his place in case of removal	300
vacancy in the office of	301
compensation of	302
oath of	303
power of to pardon	304, 306
power of to command the army and navy	304, 305
power of to make treaties	307-309
power of appointment	307, 310-316
to give information to Congress	317, 318
to convene Congress	317, 319
to execute the laws	320
to receive ambassadors	317, 321
may be impeached	323
Pay Department	334
Pension	611
Petition, the right of the people to	424, 426
People of the United States one nation	525-527
Plan of 1754	20, 21
Patent Laws and Copyrights	572-579
Private property, how taken	390
Press, its freedom	425
Post-office Department	640
Postmaster-general	641
Powers not delegated	433
Public acts, records, and judicial proceedings	396-398
Purchasing Department	633
Public ministers, who they are	547
credentials of	560
privileges	563, 564

Q.

Quorum	77
--------	----

R.

Ratiofication	423
Ratiofication of the Constitution	426-428
Religion, Congress can make no law respecting	426
Religious test	421
Republican form of government guaranteed	463
Requisition Bureau	610
Royal governments	6
Rights, enumeration of does not dispenge	433
Representatives to Congress, who shall be electors of	37, 38
qualifications of	38-41
apportionment of	42, 43, 46
mode of electing	45
Rules of proceeding, each House determines	73, 80

S.

Settlement of America	1
Senate of the United States, how composed	54, 55
how chosen	56
how divided	57, 58
vacancies	57, 59
President of	62-66
power to try impeachments	67-69, 71
Senators, qualifications of	68, 61
Senators and Representatives, compensation of	91, 92
privileges of	91, 93-98
shall not be appointed to	
office	99-101
States, restrictions on	241, 242, 272, 281-285
Soldiery shall not be quartered in houses	428
Searches and seizures shall not be, except	429
State constitutions, when adopted	465
legislation, its object and extent	486-493, 495-497
constitutions, how they agree	496, 497
how they differ	498-506
department of	545, 546
Secretary of legation	552
Sheriff	711-713
State governments, operations of	704
legislative functions of	705, 706
judiciary of	709, 712, 714
executive of	720-721
Subsistence department	635
Surgeon-general	636

T.

Tax on exportation	236
Territory, power to acquire	236
Titles of nobility not grantable	239, 240, 271
Tonnage duties	278
Topographical Bureau	630
Treason	392, 393, 395
Treasury, Department of	581, 582
Secretary of	583
1st Comptroller of	584
2d "	585
1st Auditor of	586
2d "	587
3d "	588
4th "	589
5th "	590
Treasurer of the United States	591
Register of " "	592
Solicitor of	593
Trial by jury	385, 396, 397

U.

United States Bank	214-221
------------------------------	---------

V.

Virginia, recommendation of a Convention	13
Vacancies in representation	48, 49

W.

Washington, letter of, to the states	11, 12
War, Department of	608
War-office	609

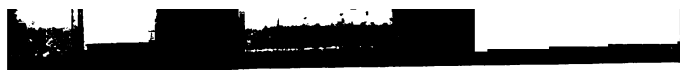
Y.

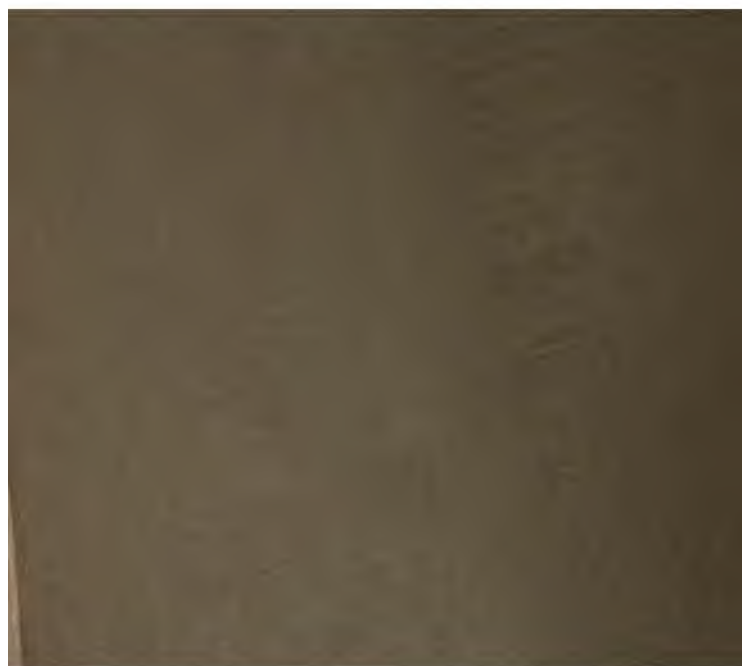
Yeas and Nays	87, 88
-------------------------	--------











APR 6 - 1933

